SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 659

GUST YIATCHOS, PETITIONER,

vs.

PEARLE W. YIATCHOS, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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[fol. 2] [File endorsement omitted]

[fol. 3]

IN THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

No. 2922

In the Matter of the Estate of
ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Plaintiff,

vs.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, Deceased, Defendant,

CONSUL GENERAL OF GREECE, Intervenor.

AGREED STATEMENT OF FACTS—Filed April 20, 1961

It is hereby stipulated and agreed by and between Gust Yiatchos, plaintiff, by his attorneys Whitmore & Whitmore, and Pearle W. Yiatchos, individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, defendant, by her attorney Charles W. Cone and Consul General of Greece, intervenor by his attorney Ned W. Kimball, that the within constitutes an Agreed Statement of Facts and a statement of the case showing how the question arose and were decided in the trial court and setting forth so many of the facts, matters and things as are essential to a decision of the questions involved by the Supreme Court of the State of Washington in the appeal in this case.

In addition to stipulating and agreeing hereto, each of the parties by executing this agreement acknowledges service of the Agreed Statement of Facts by receipt of a true-
[fol. 4] copy thereof, and hereby waives notice of settlement, approval and certification by the trial judge and

agrees that the same may be settled, approved and certified in its present form by the trial judge without notice and thereupon shall constitute the record on appeal.

Dated at Wenatchee, Washington this 19th day of April, 1961.

Whitmore & Whitmore, By E. R. Whitmore, Jr., Attorneys for Plaintiff.

Dated at Wenatchee, Washington this 19 day of April, 1961.

Charles W. Cone, Attorney for Defendant.

Dated at Waterville, Washington this 14th day of April, 1961.

Ned W. Kimball, Attorney for Intervenor.

[fol. 6]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF DOUGLAS

[Title omitted]

STATEMENT HOW QUESTIONS AROSE AND WERE DECIDED IN TRIAL COURT—March 17, 1961

This case is concerned with title to certain U. S. savings bonds involved in the above probate proceedings. Summons and complaint were personally served on the defendant and filed in the probate proceedings. The defendant only answered the complaint. Certain legatees named in the decedent's will, acting through the Consul General of Greece, their attorney in fact, properly intervened in the action.

After all pleadings were properly filed, all parties to the action entered into a stipulation as to all the material facts involved. There being only a question of law involved, no testimony was taken, and the trial, duly noted, consisted only of legal arguments supported by briefs of counsel which were heard by the trial court, sitting without a jury, on November 3, 1960.

Following the trial, the matter was taken under advisement by the court. Thereafter a memorandum opinion, which is included in this Agreed Statement of Facts, was [fol. 7] filed by the Court and pursuant and according thereto, findings of fact, conclusions of law and judgment were duly entered in March 17, 1961. This appeal has been duly taken by Gust Yiatchos, plaintiff, from said judgment.

[fol. 8] Essential Facts

Following are the facts stipulated by the parties and found by the court and the conclusions of law entered by the court essential to the decision of the questions involved by this court:

Findings of Fact

I.

That the defendant is the widow and the duly appointed, qualified and acting executrix of the Last Will and Testament of Angel N. Yiatchos, deceased; that the said last Will and Testament is presently in the course of probate in the above entitled court and cause.

II.

That among the property and possession of decedent at the time of his death were the following United States Series E savings bonds on each of which the deceased was designated as owner and the name opposite each bond was designated as beneficiary to whom the respective bond was payable on death, to-wit:

Face Amount	*Number*	*Purchase Date*	*P.O.D. Beneficiary*
$ 50.00	L211140959E	February 1951	Gust Yiatchos
25.00	Q950942219E	"	Gust Yiatchos
500.00	D22883110E	"	Gust Yiatchos
1000.00	M23752285E	"	Gust Yiatchos
1000.00	M23752287E	"	Gust Yiatchos
1000.00	M23752281E	"	Gust Yiatchos
1000.00	M23752280E	"	Gust Yiatchos

1000.00	M23752279E	February 1951	Gust Yiatchos
1000.00	M23752278E	"	Gust Yiatchos
1000.00	M23752777E	"	Gust Yiatchos
1000.00	M23222621E	"	Gust Yiatchos
1000.00	M23222620E	"	Gust Yiatchos
1000.00	M23752282E	"	Gust Yiatchos
1000.00	M23752284E	"	Gust Yiatchos
1000.00	M23752283E	"	Gust Yiatchos
[fol. 9]			
1000.00	M23752286E	"	Gust Yiatchos
500.00	D22512290E	June 1950	Constantinos Yiatchos
500.00	D22512289E	"	Constantinos Yiatchos
500.00	D22512288E	"	Constantinos Yiatchos

that the name "Constantinos Yiatchos" is another name occasionally used by the deceased to designate his brother, Gust Yiatchos or Gust N. Yiatchos, the plaintiff herein and in fact the beneficiary named on all the foregoing bonds, is the plaintiff in this action.

III.

That except for differences in issue dates and face amounts all of said bonds are, in all respects material thereto, in the form of the facsimile bond attached hereto, marked "Exhibit 1" and by this reference made a part thereof.

IV.

That the regulations governing United States savings bonds, including the bonds described herein, issued pursuant to Section 22 of the Second Liberty Bond Act as amended (49 Stat. 21, as amended; 31 U.S.C., 757 C) (31 C.F.R. 315), as amended, insofar as is material hereto are set forth in the instrument annexed hereto, marked "Exhibit 2" and by this reference made a part hereof.

V.

That the defendant was married to Angel N. Yiatchos on the 25th day of June, 1943, and that said marriage continued until the death of Angel N. Yiatchos on the 22nd day of November, 1958, and that at all time between said dates defendant and Angel N. Yiatchos were husband and wife.

[fol. 10]

VI.

That the bonds listed in paragraph 2 herein were purchased during the marriage of defendant and deceased, A. N. Yiatchos, with community funds; that the total appraised value of the estate of decedent is in the amount of Thirty-seven Thousand Two Hundred and Five Dollars ($37,205.00) all of which was the community property of the deceased and the defendant with the exception of the item listed as "Eagle Barber Shop and Fixtures" which was appraised in the amount of Seven Hundred Dollars ($700.00) which was the separate property of the deceased; that the U. S. Savings bonds described herein are not required for the payment of claims against the estate of the deceased.

VII.

That on October 7, 1954, Angel N. Yiatchos made a Last Will and Testament and in the second paragraph of that will he gives, devises and bequeaths all cash and bonds that he may own at the time of his death to his brother Gust Yiatchos and four sisters, naming them, and one nephew, naming him. The four sisters named and the nephew named being residents of Greece, Gust Yiatchos, the brother, being a resident of New York.

VIII.

That Paragraph Second of the Last Will and Testament of Angel N. Yiatchos provides:

"Second: I give, devise and bequeath all the cash and bonds that I may own as of the date of my death to my brother, Gust Yiatchos, 1024 St. John, Bronx, New York, my sisters, Marigoula Fraggaki, Stavzovla Mpatchiari, Photini Lampraki, Krisoula Demetropoulou, all residents

[fol. 11] of Greece, and my nephew Konstatinos Mparbarousis also of Greece." That intervenor Consul General of Greece represents the surviving sisters and the nephew, all residents of Greece.

That from the foregoing Findings of Fact, the Court made and entered the following:

Conclusions of Law

I.

That the United States savings bonds involved in this action were the community property of Angel N. Yiatchos and Pearle Yiatchos at the time of the death of Angel N. Yiatchos on November 22, 1958.

II.

That the community cannot be deprived of community funds by the purchase of government bonds.

III.

That the wife of decedent had a vested property right in all of said bonds equal to that of her husband.

IV.

That all of said bonds should be inventoried in the estate of Angel N. Yiatchos and shall first be applied to the payment of community debts.

V.

That one-half of said bonds, or the proceeds thereof, remaining after payment of debts shall be distributed to Pearle Yiatchos, the widow; the other one-half shall be distributed according to the terms of the Last Will and Testament of Angel N. Yiatchos, deceased.

[fol. 12]

VI.

That judgment should be entered:

1. Dismissing plaintiff's complaint;

2. Granting judgment to Pearl Yiatchos for her costs in this action;

3. Granting judgment to intervenors for their costs in this action;

4. Imposing a trust upon the bonds, as itemized in the Stipulation as to Facts entered into by all parties, for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff Gust Yiatchos, also known as Constantinos Yiatchos, be directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos deceased, and his surviving wife, and that should he fail or refuse to do so, that a commissioner be appointed by this court for the purposes of endorsing said bonds.

Dated this 17th day of March, 1961.

Felix Rea, Judge.

Presented by: Ned Kimball, Attorney for Intervenors.

* * * * * * * *

[fol. 15]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF DOUGLAS

No. 2922

In the Matter of the Estate of

ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Plaintiff,

vs.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, Defendant.

MEMORANDUM OPINION—January 30, 1961

This matter came on for hearing before this Court on the complaint of Gust Yiatchos, as plaintiff, against Pearle

W. Yiatchos, individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, wherein the plaintiff, Gust Yiatchos, prays that it be determined by the court and that he be given judgment adjudicating that he is the sole and absolute owner of United States Series E Savings Bonds described in the complaint.

It appears from the file in this matter and from the facts as stipulated by the parties that Angel N. Yiatchos and Pearle W. Yiatchos were husband and wife from June 25th, 1943, the date of their marriage, until the time of the death of Angel N. Yiatchos, November 22nd, 1958.

It also appears that during the years of 1950 and 1951, Angel Yiatchos, with community funds, purchased some 19 [fol. 16] United States Series E Savings Bonds, and that the face value of these bonds is $15,075.00. It also appears that from the exhibit attached to the Stipulation as to Facts, that the bonds were purchased in the name of Angel N. Yiatchos, P.O.D. (which probably mean payable on death) and then the name of Mr. Gust N. Yiatchos or Constantinos Yiatchos. It has been stipulated that Gust Yiatchos and Constantinos Yiatchos are one and the same person.

On October 7, 1954, Angel N. Yiatchos made a last will and testament, and in the second paragraph of that will he gives, devises and bequeaths all cash and bonds that he may own at the time of his death to his brother Gust Yiatchos and four sisters, naming them and one nephew, naming him. The four sisters named and the nephew being residents of Greece, Gust Yiatchos, the brother being a resident of New York.

At the time of the hearing on this matter, it appeared that the three sisters and the nephew, who survived the deceased, had intervened in the action through the Consul General of Greece in San Francisco, and they ask that the attempted transfer of property to Gust Yiatchos in the nature of these bonds be set aside because the same were community property and that one-half of the amount of the bonds go to the surviving widow and one-half be disbursed according to the last will and testament of Angel according to paragraph second of the will. The surviving spouse took the position that the bonds were community property and should be part of the community estate of

Angel N. Yiatchos and distributed according to his last will and testament.

[fol. 17] The Court appreciates the work done by counsel in this matter and the briefs that have been furnished by them to aid in reaching a decision in this matter.

The argument of the counsel for Gust Yiatchos, the plaintiff, is to the effect that these bonds constitute a contract with the United States Government, and that the rights of the persons to an interest in the bonds should be determined according to that contract. It is also argued that, if Gust Yiatchos is not entitled to all of the bonds, that he is entitled at least to a one-half interest in the bonds, because the bonds being purchased with community property were owned one-half by the defendant, Angel N. Yiatchos and one-half by his surviving spouse.

It is also argued on behalf of Gust Yiatchos that the rights of the parties to the bonds are determined by Chapter 14 of the Session Laws of 1943 of the State of Washington, which has now become part of the Revised Code of Washington, being Sections 11.04.230 and 11.04.240 of that code. That law provides that the surviving co-owner of United States Savings Bonds will be the sole and absolute owner of the bonds, and that if the bonds were payable on death to another person that the surviving beneficiary will be the sole and absolute owner of the bonds. It is the argument of the attorneys for Gust Yiatchos that Chapter 14 of the Laws of 1943 was passed to avoid the holding in the case of Decker vs. Fowler, 199 Wash. 549 (1939). It appears to the Court that this 1943 act would probably be controlling under a set of facts such as we had in the Decker case, which did not involve community property interests in any manner. But, the [fol. 18] Court does not feel that this law would be controlling where, as in this case, the bonds were purchased with community funds.

Cases have been cited to the Court from other jurisdictions where courts have taken the stand that this was a contract with the Federal Government and therefore the person named as beneficiary or co-owner in the bonds who survived would be entitled to the bonds. One or two of those cases come from courts in states where they have

the community property system and therefore do have to be given consideration in determining the question here before the Court.

It appears to the Court that the question of property rights in the State of Washington is one of the most important questions to be kept in mind in trying to determine the question here before the Court. The IXth amendment to the United States Constitution is as follows:

"Reservation of rights of the people. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment X of the United States Constitution is as follows:

"Powers reserved to the states or people. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The right of the States to determine their own property system was never delegated to the United States by the Constitution, therefore it was reserved to the States re-
[fol. 19] spectively, or to the people.

The right of the State of Washington to maintain its community property system, whereby the wife and husband both had a vested rights in all community property acquired after marriage, has been upheld by the United States Supreme Court. A case on this point is the case of Burns Poe, Director of Internal Revenue for the District of Washington vs. H. G. Seaborn, 75 L. Ed. 238, 282 U.S. 101 (1930). The purpose of that case was to determine whether husbands and wives living in the State of Washington had to show all their income as the husband's income, in one tax return, for a purpose of Federal Income Tax, or whether the husband and a wife could each make separate income tax returns and claim a half interest for each in the income of the community. The United States Supreme Court there recognized that the law of the state was controlling as to the wife's ownership of or interest in community property, and it was also stated in the opinion in that case that it is clear that the wife has "in Washington a vested

property right in the community property equal to that of her husband and in the income of the community including salaries or wages of either husband or wife or both. A description of the community system of Washington and of the rights of the spouses and of the powers of the husband as manager, will be found in Warburton vs. White, 176 U.S. 484, 44 L. ed. 555, 20 S. Ct. 404." Therefore, according to the ruling of the United States Supreme Court, a wife in the State of Washington has a vested right in the community property that is acquired by a husband and wife.

It appears to this Court that neither the United States [fol. 20] Congress nor the Washington State Legislature has any right to change the property system in the State of Washington by acts providing for the issuance of United States Savings Bonds.

As was stated by Mr. Cone at the time of the argument on this question, it appears that the Supreme Court of the State of Washington has answered the question before us in the case of In re Allen's Estate, 54 Wash. (2d) 616, 343 Pac. (2d) 867. In that case bonds were purchased with community funds and placed in the name of the husband and wife. Both the husband and wife had been married before and the wife had a son by the prior marriage. The wife passed away and apparently left no will, the husband was appointed administrator and did not inventory the United States Savings Bonds as part of the estate, and at the time of the presentation of the final account and petition for distribution the son of the deceased objected on the ground that the bonds should have been inventoried as part of the community property of this estate. The lower court so held and the supreme court affirmed the lower court.

The following statement is from page 619 of the opinion in the Allen case:

> "All property acquired after marriage except by gift devise or descent is community property. . . ."
>
> "It is undisputed that the series E bonds were purchased with community funds. The bonds so purchased therefore, were community property. If this were not

so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds."

The following statement is from page 620 of the Allen opinion:

"We therefore hold that, irrespective of the Treasury [fol. 21] regulations, a member of the community cannot be deprived of community funds by the purchase of government bonds."

The case of Togliatti vs. Robertson, 29 Wash. (2d) 844, 190 Pac. (2d) 575, deals with the question of United States savings bonds and community and separate property. The following quotation is from page 847 of the opinion in that case:

"If these savings bonds were his separate property, he did not die seized of them. They passed to Katy Togliatti, the surviving co-owner, upon his death. On the other hand, if the bonds were purchased with community funds, he had no right to make a gift of them by naming Katy Togliatti co-owner, and the bonds would be inherited by his widow."

Another case in point is the case of In Re Towey's Estate, 22 Wash. (2d) 212, 155 Pac. (2d) 273. That case concerned the proceeds of four life insurance policies on the life of the deceased husband, John Thomas Towey. The premiums on the life insurance policies had been paid with community funds. The supreme court held that the proceeds of these four policies were community property. The following quotation is from the opinion in that case:

"For the sake of clarity, we are repetitive. The subject matter (proceeds of four life insurance policies) of this controversy is community property, which, of course, was owned equally by John Thomas Towey and his wife (respondent), as all community property, both real and personal, is owned by both spouses equally. That is, respondent had a vested property

right in all of the community property (proceeds of insurance policies and all other assets of the marital community) equal to that of her husband. When the husband died, the assets (insurance proceeds and all other community property) of the marital community should have been applied to payment of debts of the marital community. One half of the community property remaining after payment of debts of the community should have been distributed to respondent widow. The other one-half of the community property remaining after payment of debts of the community [fol. 22] was subject to testamentary disposition of decedent Towey (Rem. Rev. Stat., §1342), and that one half should have been distributed pursuant to the terms of his last will and testament, executed January 17, 1943."

In Marston vs. Rue, 92 Wash. 129, 159 Pac. 111, it is pointed out very clearly that the husband cannot give away property of the community against the wife's consent, and at page 131 in that opinion there is this statement:

"No part of those savings can he make gifts of against her consent, *even to his own relatives.*"

It appears to the Court that it is clear that under the property system in the State of Washington, the bonds purchased by Angel N. Yiatchos, naming his brother, Gust Yiatchos or Constantinos Yiatchos, as beneficiary, were purchased with community funds and are therefore community property of Angel N. Yiatchos and his surviving wife. The surviving wife is entitled to one-half interest in these bonds. The other one-half interest is subject to the testamentary distribution made by the deceased in his last will and testament. Counsel for the plaintiff argue that even though the bonds are found to be community property, their client should be entitled to one-half interest in the bonds inasmuch as Angel N. Yiatchos owned one-half interest. This argument has some appeal and cannot be disregarded without attention. However, it appears to the Court that these bonds are community property

and the interest of Angel N. Yiatchos in those bonds, as well as any other community property, can be disposed of only by last will and testament or by the laws of descent of the State of Washington, if he did not have a last will and testament. The bonds are community property in their entirety. The brother, who is named as the beneficiary on the bonds, has no right to the bonds or to the proceeds thereof by reason of his having been named as beneficiary [fol. 23] on the bonds. These bonds or the proceeds on the bonds are the community property of Angel N. Yiatchos and his surviving spouse, and are the assets of his estate and should be probated as such, and the surviving wife should receive her one-half interest in the bonds and the other one-half should be distributed in accordance with his last will and testament. It being understood that the bonds, like all other community property, are subject to use for payment of community debts.

Therefore, It Is the Opinion of This Court that the complaint of Gust Yiatchos, plaintiff, should be dismissed and the other parties are entitled to a judgment for costs against the plaintiff, and that the interveners be granted a judgment on their cross complaint and for their costs and disbursements in the action.

It Is Further Ordered that a trust be imposed upon these bonds for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff Gust Yiatchos, also known as Constantinos Yiatchos, be directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos, deceased, and his surviving wife, and that should he fail or refuse to do so that a commissioner be appointed by this Court for purpose of endorsing said bonds.

Done in Open Court this 30th day of January, 1961.

Felix Rea, Judge.

[fol. 24] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

No. 2922

In the Matter of the Estate
of
ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Plaintiff,

vs.

PEARLE W. YIATCHOS, individually and as Executrix of the Last Will and Testament of Angel N. Yiatchos, deceased, Defendants.

JUDGMENT—March 16, 1961—and Filed March 17, 1961

This cause having come on for trial on the 3rd day of November, 1960, before the above entitled court sitting without a jury, the plaintiff being represented by his attorneys, Whitmore & Whitmore, defendant appearing by her attorney, Charles Cone, and intervenors being represented by their attorney, Ned W. Kimball; and the Court having heard the testimony presented, having examined the evidence submitted and heard the argument of counsel, and heretofore entered its findings of fact and conclusions of law, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that the plaintiff take nothing by his complaint and that defendant and intervenors have judgment against the plaintiff for their costs in this action.

It Is Further Ordered, Adjudged and Decreed that a trust be and hereby is imposed upon the following United States Savings Bonds:

[fol. 25]

Face Amount	*Number*	*Purchase Date*	*P.O.D. Beneficiary*
$ 50.00	L211140959E	February 1951	Gust Yiatchos
25.00	Q950942219E	"	Gust Yiatchos
500.00	D22883110E	"	Gust Yiatchos
1000.00	M23752285E	"	Gust Yiatchos
1000.00	M23752287E	"	Gust Yiatchos
1000.00	M23752281E	"	Gust Yiatchos
1000.00	M23752280E	"	Gust Yiatchos
1000.00	M23752279E	"	Gust Yiatchos
1000.00	M23752278E	"	Gust Yiatchos
1000.00	M23752777E	"	Gust Yiatchos
1000.00	M23222621E	"	Gust Yiatchos
1000.00	M23222620E	"	Gust Yiatchos
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1000.00	M23752284E	"	Gust Yiatchos
1000.00	M23752283E	"	Gust Yiatchos
1000.00	M23752286E	"	Gust Yiatchos
500.00	D22512290E	June 1950	Constantinos Yiatchos
500.00	D22512289E	"	Constantinos Yiatchos
500.00	D22512288E	"	Constantinos Yiatchos

for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff, Gust Yiatchos, also known as Constantinos Yiatchos, be and hereby is directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos, deceased, and his surviving wife, and that should he fail or refuse to do so a commissioner shall be appointed by this Court for the purpose of endorsing said bonds.

Done in open court this 16th day of March, 1961.

Felix Ren, Judge.

Presented By: Ned W. Kimball, Attorney for Intervenors.

Approved as to form only & notice of presentment waived March 13, 1961, Whitmore & Whitmore, by E. R. Whitmore, Jr., Attorneys for Plaintiff.

• • • • • • • •

[fol. 30] Judge's Certificate to foregoing transcript (omitted in printing).

[fol. 31]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 36037

Department One

In the Matter of the Estate of

ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Appellant,

v.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased, Respondent.

CONSUL GENERAL OF GREECE, Intervenor.

OPINION—Filed June 28, 1962

Gust Yiatchos appeals from a final judgment in his action to determine the ownership of specified United States Government Savings Bonds, Series E, purchased by his deceased brother, Angel N. Yiatchos, with community funds of Angel N. Yiatchos and his respondent widow, Pearle W. Yiatchos.

Fortunately, the facts upon which the controversy was both tried and appealed are stipulated, so that only the question of ownership of the bonds' proceeds must be decided.

[fol. 32] All purchases were with community funds. On all of the bonds, the appellant was designated as the beneficiary to whom they were payable upon the death of Angel N. Yiatchos, which occurred November 22, 1958.

By will, however, the deceased left all of the bonds to appellant, four sisters and a nephew. By the judgment, the court imposed a trust upon the bonds for the benefit of the surviving widow and his estate, and directed the appellant to endorse them, or, in the event he refused so to do, that a commission be appointed for that purpose.[1] We affirm.

RCW 11.04.230 and RCW 11.04.240[2] do not confer upon [fol. 33] one spouse the power to convert community property into separate property. *In re Allen's Estate*, 54 Wn. (2d) 616, 343 (2d) 867, decided that a husband could not convert community funds into separate property by the purchase of series E bonds. We there said:

> "It is undisputed that the series E bonds were purchased with community funds. The bonds so purchased, therefore, were community property. If this were not so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds."

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[1] "If real or personal property is within the county, the court, in lieu of directing a conveyance thereof by a party or by a commissioner, may enter a judgment divesting the title of any party and vesting it in others, and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk." Rule of Pleading, Practice and Procedure 70, RCW Vol. 0.

[2] "If either co-owner of United States savings bonds registered in two names as co-owners (in the altegnative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond." RCW 11.04.230.

"If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond." RCW 11.04.240.

The husband's purchase with community funds of bonds payable to him alone or, after his death, payable exclusively to his brother was in fraud of the rights of the respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property, and void *ab initio*. The trial court correctly concluded:

> "That the community cannot be deprived of community funds by the purchase of government bonds."

The decision of the United States Supreme Court in *Free* v. *Bland*, —— U.S. ——, —— S. Ct. ——, —— L. Ed. (2d) ——, slip opinion, May 21, 1962, does not conflict.

The circumstances in *Free* v. *Bland, supra*, differ from the facts presented by this record. The Free bonds were purchased with community funds and were issued to *Mr. or Mrs.* Free. Mrs. Free died, and the controversy was between the surviving husband and Mrs. Free's son by a prior marriage.

[fol. 34] Chief Justice Warren expressly recognized the exception presented by this record. The opinion states:

> " . . . While affording purchasers of bonds the opportunity to choose a survivorship provision which must be recognized by the states, the regulations neither insulate the purchasers from all claims regarding ownership nor immunize the bonds from execution in satisfaction of a judgment. The Solicitor General appearing as *amicus curiae*, acknowledges that there is an exception implicit in the savings bond regulations, including the survivorship provision, so that federal bonds will not be a 'sanctuary for a wrongdoer's gains.' With this, we agree. The regulations are not intended to be a shield for fraud, and relief would be available in a case where the circumstances manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property. . . . "

This case falls within that exception. The purchase by the husband of United States Government Savings Bonds with community funds is a void endeavor to divest the

wife of any interest in her own property. While the husband is the manager of the community personal property, he is under a fiduciary duty to act for the benefit of the community. *Gannon v. Robinson*, 159 Wash. Dec. 919, 371 P. (2d) —— (1962). A breach of this duty is a constructive fraud.

The status of community property can be changed only by the agreement of both spouses. RCW 26.16.120. All of the bonds in question, being purchased with community funds, remain community property. Respondent widow had a vested one-half interest in the bond proceeds. The descent of decedent's interest is controlled by RCW 11.04.050,[3] and, therefore, must be distributed according to the terms [fol. 35] of the will.

The judgment is affirmed.

Foster, J.

We Concur:

Finley, C.J.
Hill, J.
Weaver, J.
Rosellini, J.

---

[3] "Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration." RCW 11.04.050.

[fol. 36] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
September 19, 1962

The Court having considered the appellant's petition for a rehearing herein and the answers thereto by the respondent and the intervenor-respondent,

It Is Ordered that the petition be and it is hereby denied.

Dated this 19th day of September, 1962.

By the Court: R. C. Finley, Chief Justice.

[fol. 37]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Douglas County No. 2922

No. 36037

In the Matter of the Estate of

ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, Appellant,

v.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased, Respondent.

CONSUL GENERAL OF GREECE, Intervenor.

REMITTITUR—September 19, 1962

This is to certify that the opinion of the Supreme Court of the State of Washington filed on June 28, 1962, became

the final judgment of this court in the above entitled case on September 19, 1962. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

One hundred fifteen and 92/100 ($115.92) Dollars in favor of respondent and against appellant and his surety National Surety Corporation.

The Petition for Rehearing was denied September 19, 1962.

cc: Court Reporter
Whitmore & Whitmore
Mr. Charles W. Cone
Mr. Ned W. Kimball

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 39] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 40]

SUPREME COURT OF THE UNITED STATES

No. 659—October Term, 1962

GUST YIATCHOS, Petitioner,

vs.

PEARLE W. YIATCHOS, etc.

ORDER ALLOWING CERTIORARI—February 18, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted, and the case is placed on the summary calendar. The Solicitor General is invited to file a brief expressing the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

IN THE MATTER OF THE ESTATE OF
ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, *Petitioner*,

vs.

PEARLE W. YIATCHOS, Individually and as
Executrix of the Last Will and Testament of
ANGEL N. YIATCHOS, Deceased, and
CONSUL GENERAL OF GREECE, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1962

IN THE MATTER OF THE ESTATE OF
ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS, *Petitioner*,

VS.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased, and CONSUL GENERAL OF GREECE, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner Gust Yiatchos prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Washington in the above-entitled case.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington is set forth in Appendix A hereto at page 9. It is reported at 373 P. 2d 125.

The memorandum opinion of the trial court is not contained in any published reports. It is set forth in Appendix B hereto at page 13.

JURISDICTION

The judgment of the Supreme Court of the State of Washington was entered on June 28, 1962 (R. 31). A timely petition for rehearing filed by petitioner was denied by that court on September 19, 1962 (R. 36). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Is the beneficial ownership of United States savings bonds purchased by a husband with community property, upon the death of the named owner, governed by United States Treasury Regulations or by state community property law?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case involves Article 1, § 8, Clause 2 of the United States Constitution which provides:

> "The congress shall have the power. . . .
>
> "To borrow money on the credit of the United States;".

Also involved is the Supremacy Clause, Article 6, Clause 2 of the Constitution which provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

Also involved is the statute authorizing the Secretary of the Treasury to issue United States savings

bonds and to prescribe the terms and conditions therefor. The statute, 31 U.S.C. § 757c (a), and the pertinent Treasury Regulations, 31 C.F.R. § 315.0, *et seq.*, are set forth in Appendix D and Appendix E respectively.

STATEMENT OF THE CASE

This case was heard in the trial court upon stipulated facts and was presented on appeal to the Supreme Court of the State of Washington upon an Agreed Statement of Facts (R. 2). There are no disputed questions of fact.

The deceased, Angel N. Yiatchos, during his marriage to Pearle W. Yiatchos, purchased the United States savings bonds here involved, with community property. On each bond Angel N. Yiatchos was registered as owner, and petitioner, Gust Yiatchos, was registered as P.O.D. (payable on death) beneficiary. Angel N. Yiatchos died and this action to determine the ownership of the bonds was brought in the course of the probate of his will.

The decedent's will devised all cash and bonds to his brother (petitioner herein), four sisters and one nephew.

Petitioner, as plaintiff, claimed ownership of the bonds as the registered P.O.D. beneficiary. Respondent, Pearle W. Yiatchos, named as defendant individually as deceased's widow and as executrix of his will, prayed for a one-half interest in the bonds as her community share, and asked that the remaining one-half interest be distributed to the devisees named in decedent's will. The respondent, Consul General of Greece, as attorney in fact for several devisees under decedent's will, intervened, praying that one-half the bonds

be distributed to the widow, and the remaining one-half be distributed to the devisees under the will.

The facts being stipulated, the case was heard in the trial court solely on arguments on the legal questions raised. Giving full recognition to the Treasury Regulations, which were stipulated into evidence (R. 14), would result in the award of the bonds in their entirety to petitioner, the named beneficiary. If such result were held to constitute a constructive fraud upon the wife, a constructive trust might arguably be imposed upon one-half the bonds to preserve to her, her community one-half interest in the bonds, with the remaining one-half interest going to the designated beneficiary. (There has been no contention that there was actual fraud.) If the designation of a beneficiary were held to be totally void, the widow would own one-half the bonds as her interest in community property, and the remaining one-half interest in the bonds would be distributed to the devisees under the will.

The trial court adopted the last of these three theories holding in its memorandum opinion that:

> "The bonds are community property in their entirety. The brother, who is named as beneficiary on the bonds, has no right to the bonds or to the proceeds thereof by reason of his having been named as beneficiary on the bonds" (R. 22).

The court ordered a one-half interest in the bonds distributed to the surviving spouse and the remaining one-half interest to the devisees under the will (R. 24).

Petitioner appealed to the Supreme Court of the State of Washington contending that under the Treasury Regulations and under applicable Washington State statute (Chapter 14, Section 2 of Laws of 1943,

R.C.W. 11.04.240) he, as the named beneficiary, was the sole and absolute owner of the bonds. Petitioner further contended that in the event this might be regarded as a constructive fraud on the surviving wife, a constructive trust could be imposed in her favor upon a one-half interest in the bonds, but that in such event, the remaining one-half interest in the bonds should be awarded to him as the designated beneficiary.

After the case had been submitted to the State Supreme Court on briefs and oral argument but before its decision was announced, the Supreme Court of the United States on May 21, 1962, announced its decision in *Free v. Bland*, ... US ....., 8 L ed 2d 180, 82 S Ct ..... The Supreme Court of the State of Washington affirmed the judgment of the trial court holding that the husband's purchase with community funds of bonds payable on death to his brother, was in fraud of the respondent wife, and therefore void *ab initio*. The Court stated that *Free vs. Bland*, did not conflict (R. 33). Petitioners' petition for rehearing was denied September 19, 1962 (R. 36).

The federal question which petitioner asks this court to review was essential to a decision in this case at each level of its proceeding. It was presented to the trial court in the stipulated facts, particularly Paragraph IV thereof, and Exhibit 2 (R. 9, 14), and in oral argument. Its consideration by the trial court is apparent from its memorandum opinion (R. 15), particularly its reliance upon *In re Allen's Estate*, 54 Wn. 2d 616, 343 P 2d 867, from which it quoted as follows:

> "We therefore hold that, irrespective of the treasury regulations, a member of the community cannot be deprived of community funds by the purchase of government bonds." (R. 20).

It was raised on appeal in Point No. 1 of Concise Statement of Points Relied Upon by Appellant in the Agreed Statement of Facts (R. 29), and in the Brief of Appellant. Its consideration by the Supreme Court of the State of Washington is demonstrated in its opinion, particularly its discussion of *Free v. Bland* ..... US ....., 8 L ed 2d 180, 82 S Ct ....., (R. 31) which it purported to distinguish.

REASONS FOR GRANTING THE WRIT

Petitioner believes that the state court has decided a federal question of substance not in accord with the applicable decisions of the United States Supreme Court, particularly *Free v. Bland*, ... US ....., 8 L ed 2d 180, 82 S Ct .....

For many years the question whether the beneficial ownership of United States savings bonds was governed by Treasury Regulations or state property law was unresolved by this court. State courts decided various questions in various ways and on a variety of grounds. An increasing majority of courts over the years regarded the Treasury Regulations as controlling the beneficial ownership; if fraud, actual or constructive, was present, the defrauded party was protected by the imposition of a constructive trust to restore to him that which he would otherwise lose. A typical case is *Ibey v. Ibey*, 43 A 2d 157 (N.H. 1945). Others are collected in the annotation in 37 ALR 2d 1221 "Rights Upon Death of Co-owners of United States Savings Bonds."

A minority of courts adhered to the position that the Treasury Regulations were solely for the convenience of the Federal government and did not affect beneficial ownership which was governed by state property law. *Decker v. Fowler*, 199 Wash 549, 92 P 2d 254, 131 ALR

961 (1939); *Hilley v. Hilley*, 342 S W 2d 565 (Tex. 1961).

These conflicting theories were brought together for resolution in *Free v. Bland*, ... US ....., 8 L ed 2d 180, 82 S Ct ....., in which the Supreme Court of the United States granted certiorari to the Supreme Court of Texas. It was there decided that the Treasury Regulations do determine beneficial ownership and that under the Supremacy Clause of the Constitution, state law must bow to the Federal Regulations.

The decision of the Supreme Court of the State of Washington in the instant case is to the effect that the beneficiary designation on the bonds is void and that beneficial ownership is governed by state property law. This decision must be regarded either as directly contrary to *Free v. Bland, supra*, or as involving a factual situation which technically differs from that case, but which is, at best, inconsistent with the rule of law announced therein. This state decision creates an inconsistency which should be resolved by this court in order that the effect of the designation of beneficiaries upon United States savings bonds will be the same throughout all the United States.

Further, the effect of the findings of constructive fraud as a matter of law by the state court, which question was expressly reserved in *Free v. Bland*, should now be resolved. The decision of the state court that such fraud vitiates entirely the beneficiary designation, thus benefitting strangers not defrauded at the expense of the designated beneficiary, is contrary to the Supremacy Clause.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Of Counsel

November 1962

Appendix A

OPINION OF THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE ESTATE OF ANGEL N. YIATCHOS, Deceased.

GUST YIATCHOS,
Appellant,

vs.

PEARLE W. YIATCHOS, *Individually and as Executrix of the Last Will and Testament of* ANGEL N. YIATCHOS, Deceased,
Respondent.

CONSUL GENERAL OF GREECE,
Intervenor.

No. 36037
DEPARTMENT ONE
Filed June 28, 1962

Gust Yiatchos appeals from a final judgment in his action to determine the ownership of specified United States Government Savings Bonds, Series E, purchased by his deceased brother, Angel N. Yiatchos, with community funds of Angel N. Yiatchos and his respondent widow, Pearle W. Yiatchos.

Fortunately, the facts upon which the controversy was both tried and appealed are stipulated, so that only the question of ownership of the bonds' proceeds must be decided.

All purchases were with community funds. On all of the bonds, the appellant was designated as the beneficiary to whom they were payable upon the death of Angel N. Yiatchos, which occurred November 22, 1958.

By will, however, the deceased left all of the bonds to appellant, four sisters and a nephew. By the judgment, the court imposed a trust upon the bonds for the benefit of the surviving widow and his estate, and directed the appellant to endorse them, or, in the event he refused so to do, that a commission be appointed for that purpose.[1] We affirm.

RCW 11.04.230 and RCW 11.04.240[2] do not confer upon one spouse the power to convert community property into separate property. *In re Allen's Estate*, 54 Wn. (2d) 616, 343 P. (2d) 867, decided that a husband could not convert community funds into separate property by the purchase of series E bonds. We there said:

> "It is undisputed that the series E bonds were purchased with community funds. The bonds so purchased, therefore, were community property. If this were not so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds."

---

[1] "If real or personal property is within the county, the court, in lieu of directing a conveyance thereof by a party or by a commissioner, may enter a judgment divesting the title of any party and vesting it in others, and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk." Rule of Pleading, Practice and Procedure 70, RCW Vol. 0.

[2] "If either co-owner of United States savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond." RCW 11.04.230.

"If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond." RCW 11.04.240.

The husband's purchase with community funds of bonds payable to him alone or, after his death, payable exclusively to his brother was in fraud of the rights of the respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property, and void *ab initio*. The trial court correctly concluded:

> "That the community cannot be deprived of community funds by the purchase of government bonds."

The decision of the United States Supreme Court in *Free v. Bland*, ...U.S....., ... S. Ct. ....., ... L. Ed. (2d) ....., slip opinion, May 21, 1962, does not conflict.

The circumstances in *Free v. Bland, supra*, differ from the facts presented by this record. The Free bonds were purchased with community funds and were issued to *Mr. or Mrs.* Free. Mrs. Free died, and the controversy was between the surviving husband and Mrs. Free's son by a prior marriage.

Chief Justice Warren expressly recognized the exception presented by this record. The opinion states:

> ". . . While affording purchasers of bonds the opportunity to choose a survivorship provision which must be recognized by the states, the regulations neither insulate the purchasers from all claims regarding ownership nor immunize the bonds from execution in satisfaction of a judgment. The Solicitor General, appearing as *amicus curiae*, acknowledges that there is an exception implicit in the savings bond regulations, including the survivorship provision, so that federal bonds will not be a 'sanctuary for a wrongdoer's gains.' With this, we agree. The regulations are not intended to be a shield for fraud, and relief would be available in a case where the circumstances manifest fraud or a breach of

> trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property. . . ."

This case falls within that exception. The purchase by the husband of United States Government Savings Bonds with community funds is a void endeavor to divest the wife of any interest in her own property. While the husband is the manager of the community personal property, he is under a fiduciary duty to act for the benefit of the community. *Gannon v. Robinson*, 159 Wash. Dec. 919, 371 P. (2d) ..... (1962). A breach of this duty is a constructive fraud.

The status of community property can be changed only by the agreement of both spouses, RCW 26.16.120. All of the bonds in question, being purchased with community funds, remain community property. Respondent widow had a vested one-half interest in the bond proceeds. The descent of decedent's interest is controlled by RCW 11.04.050,[1] and, therefore, must be distributed according to the terms of the will.

The judgment is affirmed.

FOSTER, J.

We concur:

FINLEY, C. J. — WEAVER, J

HILL, J. — ROSELLINI, J.

---

[1] "Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration." RCW 11.04.050.

Appendix B

MEMORANDUM OPINION OF TRIAL COURT

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

IN THE MATTER OF THE ESTATE OF ANGEL N. YIATCHOS, Deceased

GUST YIATCHOS,
Plaintiff,

vs.

PEARLE W. YIATCHOS, Individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased,
Defendant.

No. 2922
MEMORANDUM OPINION

This matter came on for hearing before this Court on the complaint of Gust Yiatchos, as plaintiff, against Pearle W. Yiatchos ,individually and as Executrix of the last will and testament of Angel N. Yiatchos, deceased, wherein the plaintiff, Gust Yiatchos, prays that it be determined by the court and that he be given judgment adjudicating that he is the sole and absolute owner of United States Series E Savings Bonds described in the complaint.

It appears from the file in this matter and from the facts as stipulated by the parties that Angel N. Yiatchos and Pearle W. Yiatchos were husband and wife at the time of his death and had been husband and wife from June 25th, 1943, the date of their marriage, until

the time of the death of Angel N. Yiatchos, November 22nd, 1958.

It also appears that during the years of 1950 and 1951, Angel Yiatchos, with community funds, purchased some 19 United States Series E Savings Bonds, and that the face value of these bonds is $15,075.00. It also appears from the exhibit attached to the Stipulation as to Facts, that the bonds were purchased in the name of Angel N. Yiatchos, P.O.D. (which probably mean payable on death) and then the name Mr. Gust N. Yiatchos or Constantinos Yiatchos. It has been stipulated that Gust Yiatchos and Constantinos Yiatchos are one and the same person.

On October 7, 1954, Angel N. Yiatchos made a last will and testament, and in the second paragraph of that will he gives, devises and bequeaths all cash and bonds that he may own at the time of his death to his brother Gust Yiatchos and four sisters, naming them, and one nephew, naming him. The four sisters named and the nephew being residents of Greece, Gust Yiatchos, the brother, being a resident of New York.

At the time of the hearing on this matter, it appeared that the three sisters and the nephew, who survived the deceased, had intervened in the action through the Counsel General of Greece in San Francisco, and they ask that the attempted transfer of property to Gust Yiatchos in the nature of these bonds be set aside because the same were community property and that one-half of the amount of the bonds go to the surviving widow and one-half be disbursed according to the last will and testament of Angel N. Yiatchos according to paragraph second of the will. The surviving spouse took the position that the bonds were community property

and should be part of the community estate of Angel N. Yiatchos and distributed according to his last will and testament.

The Court appreciates the work done by counsel in this matter and the briefs that have been furnished by them to aid in reaching a decision in this matter.

The argument of the counsel for Gust Yiatchos, the plaintiff, is to the effect that these bonds constitute a contract with the United States Government, and that the rights of the persons to an interest in the bonds should be determined according to that contract. It is also argued that, if Gust Yiatchos is not entitled to all of the bonds, that he is entitled at least to a one-half interest in the bonds, because the bonds being purchased with community property were owned one-half by the defendant, Angel N. Yiatchos and one-half by his surviving spouse.

It is also argued on behalf of Gust Yiatchos that the rights of the parties to the bonds are determined by Chapter 14 of the Session Laws of 1943 of the State of Washington, which has now become part of the Revised Code of Washington, being Sections 11.04.230 and 11.04.240 of that code. That law provides that the surviving co-owner of United States Savings Bonds will be the sole and absolute owner of the bonds, and that if the bonds were payable on death to another person that the surviving beneficiary will be the sole and absolute owner of the bonds. It is the argument of the attorneys for Gust Yiatchos that Chapter 14 of the Laws of 1943 was passed to avoid the holding in the case of *Decker vs. Fowler*, 199 Wash. 549 (1939). It appears to the Court that this 1943 act would probably be controlling under a set of facts such as we had in the Decker case, which

did not involve community property interests in any manner. But, the Court does not feel that this law would be controlling where, as in this case, the bonds were purchased with community funds.

Cases have been cited to the Court from other jurisdictions where courts have taken the stand that this was a contract with the Federal Government and therefore the person named as beneficiary or co-owner in the bonds who survived would be entitled to the bonds. One or two of those cases come from courts in states where they have the community property system and therefore do have to be given consideration in determining the question here before the Court.

It appears to the Court that the question of property rights in the State of Washington is one of the most important questions to be kept in mind in trying to determine the question here before the Court. The IXth amendment to the United States Constitution is as follows:

"*Reservation of rights of the people.* The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment X of the United States Constitution is as follows:

"*Powers reserved to the states or people.* The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The right of the States to determine their own property system was never delegated to the United States by the Constitution, therefore it was reserved to the States respectively, or to the people.

The right of the State of Washington to maintain its community property system, whereby the wife and husband both had a vested right in all community property acquired after marriage, has been upheld by the United States Supreme Court. A case on this point is the case of *Burns Poe, Director of Internal Revenue for the District of Washington, vs. H. G. Seaborn*, 75 L. Ed. 238, 282 U.S. 101 (1930). The purpose of that case was to determine whether husbands and wives living in the State of Washington had to show all their income as the husband's income, in one tax return, for a purpose of Federal Income Tax, or whether the husband and a wife could each make separate income tax return and claim a half interest for each in the income of the community. The United States Supreme Court there recognized that the law of the state was controlling as to the wife's ownership of or interest in community property, and it was also stated in the opinion in that case that it is clear that the wife has "in Washington a vested property right in the community property equal to that of her husband and in the income of the community property including salaries or wages of either husband or wife or both. A description of the community system of Washington and of the rights of the spouses and of the powers of the husband as manager, will be found in *Warburton vs. White*, 176 U.S. 484, 44 L. ed. 555, 20 S. Ct. 404." Therefore, according to the ruling of the United States Supreme Court, a wife in the State of Washington has a vested right in the community property that is acquired by a husband and wife.

It appears to this Court that neither the United States Congress nor the Washington State Legislature has any right to change the property system in the

State of Washington by acts providing for the issuance of United States Savings Bonds.

As was stated by Mr. Cone at the time of the argument on this question, it appears that the Supreme Court of the State of Washington has answered the question before us in the case of *In re Allen's Estate*, 54 Wash. (2d) 616, 343 Pac. (2d) 867. In that case bonds were purchased with community funds and placed in the name of the husband and wife. Both the husband and wife had been married before and the wife had a son by the prior marriage. The wife passed away and apparently left no will, the husband was appointed administrator and did not inventory the United States Savings Bonds as part of the estate, and at the time of the presentation of the final account and petition for distribution the son of the deceased objected on the ground that the bonds should have been inventoried as part of the community property of this estate. The lower court so held and the supreme court affirmed the lower court.

The following statement is from page 619 of the opinion in the Allen case:

> "All property acquired after marriage except by gift, devise or descent is community property. * * *."
>
> "It is undisputed that the series E bonds were purchased with community funds. The bonds so purchased, therefore, were community property. If this were not so, a designing spouse could at once transform community property into separate property by the purchase of United States bonds."

The following statement is from page 620 of the Allen opinion:

> "We therefore hold that, irrespective of the treasury regulations, a member of the community cannot be deprived of community funds by the purchase of government bonds."

The case of *Togliatti vs. Robertson*, 29 Wash. (2d) 844, 190 Pac. (2d) 575, deals with the question of United States savings bonds and community and separate property. The following quotation is from page 847 of the opinion in that case:

> "If these savings bonds were his separate property, he did not die seized of them. They passed to Katy Togliatti, the surviving co-owner, upon his death. On the other hand, if the bonds were purcased with community funds, he had no right to make a gift of them by naming Katy Togliatti co-owner, and the bonds would be inherited by his widow."

Another case in point is the case of *In re Towey's Estate*, 22 Wash. (2d) 212, 155 Pac. (2d) 273. That case concerned the proceeds of four life insurance policies on the life of the deceased husband, John Thomas Towey. The premiums on the life insurance policies had been paid with community funds. The supreme court there held that the proceeds of these four policies were community property. The following quotation is from the opinion in that case:

> "For the sake of clarity, we are repetitive. The subject matter (proceeds of four life insurance policies) of this controversy is community property, which, of course, was owned equally by John Thomas Towey and his wife (respondent), as all community property, both real and personal, is owned by both spouses equally. That is, respondent had a vested property right in all of the community property (proceeds of insurance policies and all other assets of the marital community) equal to that of her husband. When the husband died, the assets (insurance proceeds and all other community property) of the marital community should have been applied to payment of debts of the marital community. One half of the community property remaining after payment of debts of the commu-

nity should have been distributed to respondent widow. The other one half of the community property remaining after payment of debts of the community was subject to testamentary disposition of decedent Towey (Rem. Rev. Stat., §1342), and that one half should have been distributed pursuant to the terms of his last will and testament, executed January 17, 1943."

In *Marston vs. Rue*, 92 Wash. 129, 159 Pac. 111, it is pointed out very clearly that the husband cannot give away property of the community against the wife's consent, and at page 131 in that opinion there is this statement:

"No part of those savings can he make gifts of against her consent, *even to his own relatives.*"

It appears to the Court that it is clear that under the property system in the State of Washington, the bonds purchased by Angel N. Yiatchos, naming his brother, Gust Yiatchos or Constantinos Yiatchos, as beneficiary, were purchased with community funds and are therefore community property of Angel N. Yiatchos and his surviving wife. The surviving wife is entitled to one-half interest in these bonds. The other one-half interest is subject to the testamentary distribution made by the deceased in his last will and testament. Counsel for the plaintiff argue that even though the bonds are found to be community property, their client should be entitled to one-half interest in the bonds inasmuch as Angel N. Yiatchos owned one-half interest. This argument has some appeal and cannot be disregarded without attention. However, it appears to the Court that these bonds are community property and the interest of Angel N. Yiatchos in those bonds, as well as any other community property, can be disposed of only by last will and testament or by the laws of descent of the State of Washington, if he did not have a last will

and testament. The bonds are community property in their entirety. The brother, who is named as the beneficiary on the bonds, has no right to the bonds or to the proceeds thereof by reason of his having been named as beneficiary on the bonds. These bonds or the proceeds on the bonds are the community property of Angel N. Yiatchos and his surviving spouse, and are assets of his estate and should be probated as such, and the surviving wife should receive her one-half interest in the bonds and the other one-half should be distributed in accordance with his last will and testament. It being understood that the bonds, like all other community property, are subject to use for payment of community debts.

THEREFORE, IT IS THE OPINION OF THIS COURT that the complaint of Gust Yiatchos, plaintiff, should be dismissed, and the other parties are entitled to a judgment for costs against the plaintiff, and that the interveners be granted a judgment on their cross complaint and for their costs and disbursement in the action.

IT IS FURTHER ORDERED that a trust be imposed upon these bonds for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff Gust Yiatchos, also known as Constantinos Yiatchos, be directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos, deceased, and his surviving wife, and that should he fail or refuse to do so that a commissioner be appointed by this Court for purpose of endorsing said bonds.

DONE IN OPEN COURT this 30th day of January, 1961.

/s/ FELIX REA, *Judge*

Appendix C

JUDGMENT OF TRIAL COURT

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

IN THE MATTER OF THE ESTATE OF ANGEL N. YIATCHOS, Deceased.	
GUST YIATCHOS, *Plaintiff,*	
vs.	No. 2922
PEARLE W. YIATCHOS, individually and as Executrix of the Last Will and Testament of ANGEL N. YIATCHOS, Deceased, *Defendants.*	JUDGMENT

This cause having come on for trial on the 3rd day of November, 1960, before the above entitled court sitting without a jury, the plaintiff being represented by his attorneys, Whitmore & Whitmore, defendant appearing by her attorney, Charles Cone, and intervenors being represented by their attorney, Ned W. Kimball; and the Court having heard the testimony presented, having examined the evidence submitted and heard the argument of counsel, and heretofore entered its findings of fact and conclusions of law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the plaintiff take nothing by his complaint and that defendant and intervenors have judgment against the plaintiff for their costs in this action.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that a trust be and hereby is imposed upon the following United States Savings Bonds:

FACE AMOUNT	NUMBER	PURCHASE DATE	P.O.D. BENEFICIARY
$ 50.00	L211140959E	February 1951	Gust Yiatchos
25.00	Q950942219E	February 1951	Gust Yiatchos
500.00	D22883110E	February 1951	Gust Yiatchos
1000.00	M23752285E	February 1951	Gust Yiatchos
1000.00	M23752287E	February 1951	Gust Yiatchos
1000.00	M23752281E	February 1951	Gust Yiatchos
1000.00	M23752280E	February 1951	Gust Yiatchos
1000.00	M23752279E	February 1951	Gust Yiatchos
1000.00	M23752278E	February 1951	Gust Yiatchos
1000.00	M23752777E	February 1951	Gust Yiatchos
1000.00	M23222621E	February 1951	Gust Yiatchos
1000.00	M23222620E	February 1951	Gust Yiatchos
1000.00	M23752282E	February 1951	Gust Yiatchos
1000.00	M23752284E	February 1951	Gust Yiatchos
1000.00	M23752283E	February 1951	Gust Yiatchos
1000.00	M23752286E	February 1951	Gust Yiatchos
500.00	D22512290E	June 1950	Constantinos Yiatchos
500.00	D22512289E	June 1950	Constantinos Yiatchos
500.00	D22512288E	June 1950	Constantinos Yiatchos

for the benefit of the estate of Angel N. Yiatchos, deceased, and Pearle W. Yiatchos, his wife, and that the plaintiff, Gust Yiatchos, also known as Constantinos Yiatchos, be and hereby is directed to endorse the bonds so that the same may be cashed or sold, so that the proceeds will be available as community property of Angel N. Yiatchos, deceased, and his surviving wife, and that should he fail or refuse to do so a commissioner shall be appointed by this Court for the purpose of endorsing said bonds.

Done in open court this 17th day of March, 1961.

FELIX REA, *Judge*

Presented by:

NED W. KIMBALL,

Attorney for Intervenors.

Appendix D

31 U.S.C. §757c (a)

"The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and the United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by Section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b) - (d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."

Appendix E

31 C.F.R. 315.0, et seq. (315.5, 315.7, 315.20, 315.66)

"§ 315.0 *Applicability of regulations.* The regulations in this part apply generally to all United States Savings Bonds of all series of whatever designation, bearing any issue dates whatever, except as otherwise specifically provided herein."

"§ 315.5 *General.* United States Savings Bonds are issued only in registered form. The form of registration used must express the actual ownership of and interest in the bond and, except as otherwise specifically provided in Subpart E and § 315.48 of Subpart I of this part, will be considered as conclusive of such ownership and interest.***"

"§ 315.7 *Authorized forms of registration.* Subject to any limitations or restrictions contained in these regulations on the right of any person to be named as owner, coowner, or beneficiary, savings bonds may be registered in the following forms:

(a) *Natural persons. . . .*

(3) Beneficiary form—two persons (only).

Examples:

'John A. Jones payable on death to Mrs. Ella S. Jones.'

'John A. Jones P.O.D. Mrs. Ella S. Jones.'

'Payable on death' may be abbreviated to 'P.O.D.' as indicated in the last example. The first named person is hereinafter referred to as the owner and the second named person as the beneficiary."

"§ 315.20 *General.* (a) No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in, such bond as between coowners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart."

"§ 315.66. *After the death of the registered owner.* If the registered owner dies without the bond having been presented and surrendered for payment or authorized reissue and is survived by the beneficiary, upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, and payment or reissue will be made as though the bond were registered in his name alone (see Subpart K)." (Subpart K immaterial.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

GUST YIATCHOS, *Petitioner*,

vs.

PEARLE W. YIATCHOS, etc., et al.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE PETITIONER

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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1962

No. 659

GUST YIATCHOS, *Petitioner*,

vs.

PEARLE W. YIATCHOS, etc., et al.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington is reported at 60 Wn 2d 179, 373 P 2d 125. It is set forth at page 17 of the Record.

The memorandum opinion of the trial court is not contained in any published reports. It is set forth at page 7 of the Record.

JURISDICTION

The judgment of the Supreme Court of the State of Washington was entered on June 28, 1962 (R. 17). A timely petition for rehearing filed by petitioner was denied by that Court on September 19, 1962 (R. 21). On December 12, 1962, a petition for a Writ of Certiorari was filed in this Court to review this decision. This Court granted the Writ on February 18, 1963, and

placed the case on the summary calendar (R. 23). The jurisdiction of this Court is invoked under 28 USC § 1257 (3).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case involves Article 1, § 8, Clause 2 of the United States Constitution which provides:

> "The congress shall have the power. . . .
>
> "To borrow money on the credit of the United States;".

Also involved is the Supremacy Clause, Article 6, Clause 2 of the Constitution which provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Also involved is the statute authorizing the Secretary of the Treasury to issue United States Savings Bonds and to prescribe the terms and conditions therefor. The statute, 31 USC § 757c (a), and the pertinent Treasury Regulations, 31 C.F.R. § 315.0, et seq., are set forth in the Appendix hereto (pp. 17).

QUESTIONS PRESENTED

Upon the death of the named owner of United States Savings Bonds purchased by a husband with community property, is the beneficial ownership of such bonds governed by United States Treasury Regulations or by state community property law?

Does the mere purchase by a spouse with community funds of United States Savings Bonds, designating a stranger to the community as beneficiary, give rise to relief to the surviving spouse upon the death of the purchaser, in the absence of evidence of actual fraud or evidence of the improper disposition of such a disproportionate share of the community property as to be tantamount to fraud?

If the designation of a stranger to the community as beneficiary upon United States Savings Bonds is held under state community property law to work a constructive fraud upon the surviving spouse when the named owner spouse dies, is the beneficiary designation on the bonds void in its entirety, or is the remedy limited to preserving to the surviving spouse her one-half interest in the bonds by the imposition of a constructive trust, giving full force and effect to the beneficiary designation as to the remaining one-half interest which is untainted by fraud?

STATEMENT OF THE CASE

This case was heard in the trial court upon stipulated facts and was presented on appeal to the Supreme Court of the State of Washington upon an Agreed Statement of Facts (R. 1). There are no disputed questions of fact.

The deceased, Angel N. Yiatchos, during his marriage to Pearle W. Yiatchos, purchased the United States Savings Bonds here involved with community property. On each bond Angel N. Yiatchos was registered as owner, and petitioner, Gust Yiatchos, his brother, was registered as P.O.D. (payable on death) beneficiary. Angel N. Yiatchos died and this action to determine the ownership of the bonds was brought in the course of the probate of his will.

The decedent's will bequeathed all cash and bonds to his brother (petitioner herein), four sisters and one nephew.

Petitioner, as plaintiff, claimed ownership of the bonds as the registered P.O.D. beneficiary. Respondent, Pearle W. Yiatchos, named as defendant individually as deceased's widow and as executrix of his will, prayed for a one-half interest in the bonds as her community share, and asked that the remaining one-half interest be distributed to the legatees named in decedent's will. The respondent, Consul General of Greece, as attorney in fact for several legatees under decedent's will, intervened, praying that one-half the bonds be distributed to the widow, and that the remaining one-half be distributed to the legatees under the will.

The facts being stipulated, the case was heard in the trial court solely on arguments on the legal questions raised. Giving full recognition to the Treasury Regulations would result in the award of the bonds in their entirety to petitioner, the named beneficiary. If such result were held to constitute a constructive fraud upon the wife, a constructive trust might be imposed upon one-half the bonds to preserve to her, her community one-half interest in the bonds, with the remaining one-half interest going to the designated beneficiary. (There has been no contention made that there was actual fraud.) If the designation of a beneficiary were held to be totally void, the widow would own one-half the bonds as her interest in community property, and the remaining one-half interest in the bonds would be distributed to the legatees under the will.

The trial court adopted the last of these three theories holding in its memorandum opinion that:

"The bonds are community property in their entirety. The brother, who is named as beneficiary on the bonds, has no right to the bonds or to the proceeds thereof by reason of his having been named as beneficiary on the bonds." (R. 14.)

The court ordered a one-half interest in the bonds distributed to the surviving spouse and the remaining one-half interest to the legatees under the will (R. 15).

Petitioner appealed to the Supreme Court of the State of Washington contending that under the Treasury Regulations and under applicable Washington State statute[1] he, as the named beneficiary, was the sole and absolute owner of the bonds. Petitioner further contended that in the event this might be held to be a constructive fraud on the surviving wife, a constructive trust could be imposed in her favor upon a one-half interest in the bonds, but that in such event, the remaining one-half interest in the bonds should be awarded to him as the designated beneficiary.

After the case had been submitted to the State Supreme Court on briefs and oral argument but before its decision was announced, the Supreme Court of the United States on May 21, 1962, announced its decision in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, holding that the survivorship provisions of the

---

[1]Chapter 14, Section 2 of Laws of 1943, Revised Code of Washington 11.04.240:

"U. S. Savings Bond—Effect of Beneficiary's Survival of Registered Owner. If the registered owner of United States Savings Bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a Federal Reserve Bank or the Treasury Department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond."

Section 1 of that Act codified in RCW 11.04.230 makes the same provision as to co-owner bonds.

United States Savings Bonds controlled beneficial ownership, and that state law must yield if in conflict.

Notwithstanding this decision, the Supreme Court of the State of Washington affirmed the judgment of the trial court holding that the husband's purchase with community funds of bonds payable on death to his brother was in fraud of the respondent wife, and therefore void *ab initio*. The Court stated that *Free v. Bland* did not conflict (R. 19).

The upshot of the State Court's decision is to award a one-half interest to the bonds to the widow, the other half to the legatees under the will, and nothing to the beneficiary named on the bonds.

ARGUMENT

THE BONDS SHOULD BE HONORED ACCORDING TO THEIR TERMS IN THEIR ENTIRETY.

Petitioner, Gust Yiatchos, is the only named beneficiary on all the United States Savings Bonds involved in this action. The Treasury Regulations unequivocally provide that, "upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, . . ." 31 CFR § 315.66 (Appendix p. 19).

The essence of the decision of the Supreme Court of Washington is found in the following statement from the Court's opinion:

> "The husband's purchase with community funds of bonds payable to him alone or, after his death, payable exclusively to his brother, was in fraud of the rights of the respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property, and void *ab initio*." (R. 19).

The Court decided that the widow had a vested one-half interest in the bond proceeds and the remaining

one-half interest must be distributed according to the deceased husband's will (R. 20). No effect is given to the designation of the beneficiary on the bonds.

Although the State Court in holding the purchase of bonds void did not speak of constructive trust, it affirmed the judgment of the trial court which had imposed a trust on the bonds for the benefit of the widow and the legatees under the will (R. 15).

Petitioner believes that the decision of the Supreme Court of Washington is contrary to recognized principles of law and serves no desirable purpose of equity or justice. It is diametrically opposed to the Treasury Regulations adopted pursuant to the United States Constitution. Finally, and most significantly, it is contrary to the decision of the United State Supreme Court in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, which should have laid to rest any possible doubt there might have been on the question.

The contribution of the Washington Supreme Court in this field of law was early and unfortunate. In *Decker v. Fowler*, 199 Wash 549, 92 P 2d 254, 131 ALR 961 (1939), it was decided that the purpose of the federal regulations was simply to provide a convenient method of payment and they were to be given no effect in a determination of the beneficial ownership of the bonds or their proceeds. The basis of the Court's decision was that the designation of a beneficiary constituted an attempted gift of the bonds which must fail unless all the requisites of a gift, including delivery, were present. The great majority of courts declined to follow this lead and the decision was much criticized.[2]

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[2]Annotation "Rights upon death of co-owners of United States savings bonds," 37 ALR 2d 1221. Comment, "Donee beneficiary—*Decker v. Fowler*," 14 Wash L Rev 312.

The Washington legislature attempted to overcome the *Decker v. Fowler* decision by the enactment of Chapter 14, Section 2 of Laws of 1943 (RCW 11.04.240), which provided:

> "If the registered owner of United States Savings Bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a Federal Reserve Bank or the Treasury Department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond."

The effect of this legislation does not appear to have been directly presented to the Washington Supreme Court for more than fifteen years. During the interim, a great body of decisional law developed throughout the remainder of the country, the great majority of which was contrary to *Decker v. Fowler*.[3] It was generally accepted that Washington had repudiated that decision by statute. Typical is the comment in *Lee v. Anderson*, 70 Ariz 208, 218 P 2d 732 (1950), where the Court said with reference to *Decker v. Fowler*:

> "Since that decision was rendered, the legislature of Washington has passed legislation designed to harmonize future decisions of that Court on this question with the overwhelming majority rule."

The next decision of the Washington Supreme Court on the subject was *In re Allen's Estate*, 54 Wn 2d 616, 343 P 2d 867 (1959), which differed somewhat on the facts from the instant case.[4] There the beneficiary wife

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[3] Annotation "Rights upon death of co-owners of United States savings bonds, 57 ALR 2d 1221.

[4] The *Allen* case appears indistinguishable on its facts from *Free v. Bland*, and the decision is contrary to that later announced in *Free v. Bland*.

died and the surviving husband claimed the sole ownership of the bonds as registered owner. The Court held that the bonds were the property of the marital community. The Court probably foreshadowed the result in the instant case with its statement:

> "We therefore hold that, irrespective of the treasury regulations, a member of the community cannot be deprived of community funds by the purchase of government bonds."

It was in this background that the present case was presented to the Washington Supreme Court.[1] After the case had been argued, but before the decision was filed, the United States Supreme Court announced its decision in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, in which the holding was stated as follows:

> "We hold, therefore, that the state law which prohibits a married couple from taking advantage of the survivorship provisions of United States Savings Bonds merely because the purchase price is paid out of community property must fall under the Supremacy Clause."

Notwithstanding that decision (and without having allowed opportunity for argument pursuant to it), the Washington Supreme Court held that the purchase of such bonds by a married person with community funds was void as an attempt to divest the wife of her interest in community property.

---

[1] The decision in *In re Allen's Estate*, 54 Wn 2d 616, 343 P 2d 867, had aroused speculation as to the proper decision to be reached under the facts of the present case. The writer of a comment in 35 Wash L Rev 280 (1960) expressed the opinion that the spouse should be entitled to the imposition of a constructive trust in her favor upon a one-half interest in the bonds with the remaining one-half going to the designated beneficiary.

The approach taken by the Court, that its decision was necessary in order to prevent a designing husband from converting community property into separate property and thereby divesting the wife of any interest in her own property, is unrealistic and unreasonable. There is nothing inherent in the acquisition of such bonds which needs to be considered as rendering them unavailable for the support and benefit of the community, nor unavailable for division in a divorce action, nor beyond the reach of creditors of the community.

Each member of the community has the right to dispose of his one-half of the community property under Washington law in any event.* The result of the decision is to deny to a married person the right to accomplish by the purchase of United States Savings Bonds that which he could have accomplished by a will.

The State Court holding makes it impossible for a married person in the State of Washington to transmit his property on death by means of United States Sav-

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*RCW 11.04.050 *Descent and distribution of community property.* Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

RCW 26.16.030 *Community property defined—Control of personalty.* Property not acquired or owned as prescribed in RCW 26.16.010 and 26.16.020 acquired after marriage by either husband or wife or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof.

ings Bonds, an instrument which is available to anyone else in any other part of the United States. Worse than that, it constitutes a trap for the unwary, for who but the most learned in the law would suspect that the naming of a beneficiary upon an obligation of the United States Government would be an utterly meaningless gesture.

If a United States Savings Bond is not to be paid to any extent according to the terms appearing upon its face, its integrity is certainly suspect and its attractiveness to investors greatly damaged.

The avoidance of these evils was the basis of the decision in *Free v. Bland*, 369 US 663, 8 L ed 2d 180, 82 S Ct 1089, which petitioner believes is clearly decisive of the present case aside from the merits of petitioner's cause which should sustain his contention here independently of precedent. As there stated:

> "If the State can frustrate the parties' attempt to use the bonds' survivorship provision through the simple expedient of requiring the survivor to reimburse the estate of the deceased co-owner as a matter of law, the State has interfered directly with the legitimate exercise of the power of the Federal Government to borrow money."

Petitioner believes that the State Court's decision is irreconcilable with *Free v. Bland* and that its effort to distinguish that case can only kindly be described as feeble at best. In effect, the State Court held the survivorship provisions of United States Savings Bonds to be void because of conflict with state property law. The writer of a note on the *Yiatchos* case comments on that opinion thusly:

> "In other words, the court adhered to the 'convenience theory' and denied the supremacy of the

federal regulations, notwithstanding the Supreme Court's contrary pronouncement. But, if this was unusual, the rest of the opinion would seem extraordinary."[7]

As the author then points out, the State Court completely omitted reference to the statement in *Free v. Bland* that,

> "... the doctrine of fraud applicable *under federal law* ... must be determined on another day..."
> (Emphasis supplied.)

Citing *Holmberg v. Armbrecht*, 327 US 392, 90 L ed 743, 66 S Ct 582, 162 ALR 719; *Clearfield Trust Co. v. United States*, 318 US 363, 87 L ed 838, 63 S Ct 573.

In spite of this direction, the State Court applied purely state law in complete derogation of the federal regulations and emasculation of *Free v. Bland*.

In line with the principle of *Clearfield Trust Co. v. United States*, the instant case presents a situation where a uniform rule throughout the United States is singularly desirable and conversely a hodge-podge of various state rules would be most unsatisfactory.[8] United States Savings Bonds are marketed to the great mass of individuals throughout the country, among whom the sophisticated and technically informed investor is the exception rather than the rule. With the increasingly migratory nature of our population, the

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[7] 35 Wash L Rev No. 2, p. 255.

[8] The rules applied by the various states are so widely varied, both as between community property and non-community property states and within each category, that an attempt to capitulate them here would be a practicable impossibility and would serve very little purpose. An extensive review of the subject is contained in an annotation in 49 ALR 2d 521, "Gift or other voluntary transfer by husband as fraud on wife."

confidence necessary to the ready marketability of these bonds requires that they be given consistent effect throughout all of the states.

The provisions of the bonds and the Treasury Regulations governing them should be deviated from only in the most compelling circumstances.

In upholding the supremacy of the Federal law and regulations and the integrity of the bonds, the bonds should be paid according to their terms in the absence of a showing of actual fraud or fraudulent intent or the transfer of such a disproportionate share of the estate as to be tantamount thereto. The burden should be upon the party attacking the survivorship provisions of the bonds to allege and prove such circumstances.

In the instant case, there is no contention made that there was actual fraud practiced by the deceased in the purchase of the bonds, no hint of fraudulent intent or improper design to deprive the spouse of her property. The total face value of the bonds is $15,075.00, and the total appraised value of the community estate, including the bonds, is $36,505.00, and the bonds are not required for payment of claims against the estate (R. 5). The only impropriety present is that which might be imputed by the court as a matter of law. Since the deceased husband had the right to dispose of one-half of the community property,[1] petitioner contends that there is here no fraud on the wife and consequently no justification for imposing a constructive trust at all.

No improper design on the part of the husband or disproportionate transfer of community property is

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[1]RCW 11.04.050 and RCW 26.16.030 Set forth in footnote 6 herein.

present in the instant case. The bonds should be honored according to their terms and awarded to petitioner in their entirety.

EVEN IF A CONSTRUCTIVE TRUST BE IMPOSED IN FAVOR OF THE SURVIVING SPOUSE AS TO A ONE-HALF INTEREST IN THE BONDS, THE BENEFICIARY DESIGNATION SHOULD BE HONORED AS TO THE REMAINING ONE-HALF INTEREST.

In *Free v. Bland* this Court indicated that relief under Federal law would be available where the circumstances "manifest fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community property."

The State Court in the instant case held that any purchase by a spouse of United States Savings Bonds with community property, designating someone other than the marital partner as beneficiary, would constitute such fraud or breach of trust *as a matter of law* in the absence of affirmative proof of consent thereto by the non-purchasing spouse. Even if such holding by the State Court be accepted by this court, there remains the question of the nature and extent of the relief to be provided.

While the purpose of the State Court, namely, the protection of the rights of the spouse, might be laudable, the remedy it applied went far beyond the purported wrong it sought to rectify. It was completely unnecessary to such purpose to hold the designation of the beneficiary to be totally void. The same protection could have been afforded by the imposition of a constructive trust in her favor upon an undivided one-half interest in the bonds.

It seems scarcely arguable that any relief to be provided should be designed to correct the wrong found and that it should be limited by that purpose. The wrong asserted here is the deprivation of the widow of her interest in community property. This interest is in no event more than one-half of the property and, in fact, in the instant case under decedent's will, the remaining one-half interest is devised to collateral heirs (R. 5). It is pointless to hold the designation of the beneficiary completely void for this remedies no evil. It amounts to nothing less than punishment of the deceased spouse for having attempted to utilize the survivorship provisions of United States Savings Bonds.

The courts of other states have found the extremes of the Washington Supreme Court unnecessary and the remedy here suggested by petitioner to be adequate. Except for the fact that it was not in a community property state, the New Hampshire case of *Ibey v. Ibey*, 43 A 2d 157 (NH 1945) is indistinguishable on the facts from the present case. The Court there said:

> "If fraud as herein defined is found, it does not follow that the bonds, valid in themselves, belong to the estate. The widow is entitled to what she has lost, but otherwise the bonds are payable in accordance with their terms."[*]

Petitioner urges that if the Treasury Regulations are to be regarded as the supreme law of the land, they must be given effect at least up to the point when to do

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[*] *Katz v. Driscoll*, 194 P 2d 822 (Cal 1948), limits recovery in similar fashion. In *Succession of Geagan*, 33 So 2d 118 (La 1947), the wife was awarded judgment against her deceased husband's son named on the bonds for one-half the value thereof. See also Annotation: "Imposition or Declaration of Constructive or Resulting Trust in United States savings bonds, 51 ALR 2d 163."

so would be to permit United States Savings Bonds to be an implement of fraud outrageous to justice or would deprive a person of his vested property interests. To enforce the beneficiary designation in the instant case as against the collateral legatees runs afoul of no such transcendent consideration. The collateral legatees have no such vested property rights and cannot claim fraud of any kind constructive or otherwise.

If awarding the bonds in their entirety to petitioner as the designated beneficiary be deemed to work a constructive fraud upon the widow, her interest can be protected by the imposition of a constructive trust in her favor upon an undivided one-half interest in the bonds. The remaining one-half interest should be held to be the property of the designated beneficiary.

CONCLUSION

The decision of the Supreme Court of Washington holding the designation of beneficiary upon United States Savings Bonds purchased with community funds to be void, should be reversed.

The bonds should be awarded to petitioner as the designated beneficiary in their entirety or at the very least as to the one-half interest remaining after a one-half interest has been preserved to the surviving spouse by the imposition of a constructive trust.

Respectfully submitted,

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Appendix A
31 U.S.C. § 757c (a)

"The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and the United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by Section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b) - (d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe."

Appendix B
31 C.F.R. 315.0, et seq. (315.5, 315.7, 315.20, 315.66)

"§ 315.0 *Applicability of regulations.* The regulations in this part apply generally to all United States Savings Bonds of all series of whatever designation, bearing any issue dates whatever, except as otherwise specifically provided herein."

"§ 315.5 *General.* United States Savings Bonds are issued only in registered form. The form of registration used must express the actual ownership of and interest in the bond and, except as otherwise specifically provided in Subpart E and § 315.48 of Subpart I of this part, will be considered as conclusive of such ownership and interest.***"

"§ 315.7 *Authorized forms of registration.* Subject to any limitations or restrictions contained in these regulations on the right of any person to be named as owner, coowner, or beneficiary, savings bonds may be registered in the followni forms:

(a) *Natural persons. . . .*

(3) Beneficiary form—two persons (only).

Examples:

'John A. Jones payable on death to Mrs. Ella S. Jones.'

'John A. Jones P.O.D. Mrs. Ella S. Jones.'

'Payable on death' may be abbreviated to 'P.O.D.' as indicated in the last example. The first named person is hereinafter referred to as the owner and the second named person as the beneficiary."

"§ 315.20 *General.* (a) No judicial determination will be recognized which would give effect to an at-

tempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in, such bond as between coowners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart."

"§ 315.66. *After the death of the registered owner.* If the registered owner dies without the bond having been presented and surrendered for payment or authorized reissue and is survived by the beneficiary, upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, and payment or reissue will be made as though the bond were registered in his name alone (see Subpart K)." (Subpart K immaterial.)

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 48

GUST YIATCHOS, PETITIONER

v.

PEARLE W. YIATCHOS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Superior Court of the State of Washington in and for the County of Douglas (R. 7-14) is not reported. The opinion of the Supreme Court of the State of Washington (R. 17-20) is reported at 160 Wash. Dec. 180, 373 P. 2d 125.

JURISDICTION

The judgment of the Supreme Court of the State of Washington was entered on June 28, 1962 (R. 17). A timely petition for rehearing was denied on September 19, 1962 (R. 21). The petition for a

writ of certiorari was filed on December 12, 1962, and granted on February 18, 1963 (R. 23). 372 U.S. 905. The jurisdiction of this Court rests upon 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

A husband residing in a community-property State purchased, with community funds, United States savings bonds registered in his name, payable on death to his brother. The husband died, survived by his wife and brother. The questions presented are:

1. Whether, in the absence of a showing or finding that the purchases were without the wife's consent or knowledge, the purchases constituted a fraud on the wife (or a breach of trust tantamount thereto) within the fraud exception implicit in the Treasury Regulations governing ownership of savings bonds.

2. Whether, assuming that there is such fraud or an equivalent breach of trust as to confer upon the wife ownership of a one-half interest in the treasury bonds, the remaining one-half interest is owned by the deceased's estate or by the registered beneficiary.

STATUTES AND REGULATIONS INVOLVED

The applicable statutory and regulatory provisions are set out in the Appendix, *infra*, pp. 19-22.

STATEMENT

During 1950 and 1951 Angel N. Yiatchos, a resident of the State of Washington, purchased a number

of United States savings bonds having a total value of $15,075, using for that purpose $11,306.25 of the community funds belonging to him and his wife, respondent Pearle W. Yiatchos (R. 3-5). Angel Yiatchos registered himself as owner of each of the bonds, and his brother, petitioner Gust Yiatchos, as beneficiary to whom each of the bonds was payable upon Angel's death (R. 3-4).[1] Each of the bonds incorporated the regulations of the Department of the Treasury, which provided that, under this form of registration, "the beneficiary will be recognized as the sole and absolute owner" upon the death of the registered owner (31 C.F.R. 315.66, *infra*, pp. 21-22).

Angel N. Yiatchos died on November 22, 1958. In his Will, he named his wife, respondent Pearle Yiatchos, as executrix, and bequeathed his share of the community cash and bonds in equal shares to petitioner, Angel's four sisters, and a nephew (R. 6-7). His estate had an appraised value of $37,205, all but $700 of which consisted of community property (R. 5).

Under the law of Washington, as under the law of most community-property States, all property acquired by either spouse during marriage, except that received by gift, devise, or descent, is community

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[1] The bonds were registered "Angel N. Yiatchos P.O.D. Gust Yiatchos" or "Angel N. Yiatchos P.O.D. Constantinos Yiatchos" (R. 3-4). Constantinos was another name occasionally used to designate petitioner (R. 3-4).

property.[2] Property purchased with community funds therefore retains its character as community property.[3] Although each spouse owns an undivided one-half interest in the community property, the husband is the sole authorized manager of the property and has the same power of disposition over it as he has of his separate property, except that he shall not devise by will more than one-half thereof.[4] As manager, he is presumed to act for the community's benefit.[5] However, he cannot make substantial gifts of community property without his wife's consent.[6]

Petitioner brought suit against respondent Pearle Yiatchos, individually and as executrix, in a Superior Court for the State of Washington, seeking a judgment declaring him to be the sole and absolute owner of the savings bonds by reason of their terms and the Treasury Regulations incorporated therein (R. 7-8). The deceased's sisters and nephew, who lived in Greece, intervened through the Consul General of Greece in San Francisco (R. 8). Respondents answered that, since the bonds were purchased from

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[2] Revised Code of Washington, § 26.16.030; § 26.16.010 and §26.16.020. For an early description of the community-property system of Washington, see *Warburton* v. *White*, 176 U.S. 484.

[3] *Warburton* v. *White*, *supra*, 176 U.S. at 494-495; *In re Allen's Estate*, 54 Wash. 2d 616, 619, 343 P.2d 867.

[4] Revised Code of Washington, § 26.16.030.

[5] *Gannon* v. *Robinson*, 59 Wash. 2d 906, 907, 371 P.2d 274; *Marston* v. *Rue*, 92 Wash. 129, 131, 159 Pac. 111.

[6] *Marston* v. *Rue*, *supra*; *Hanley* v. *Most*, 9 Wash. 2d 429, 458-459, 115 P. 2d 933.

community property, they should be treated as community property and distributed as part of the community estate, with one-half to go to the wife and the remainder to be divided among the five other respondents and petitioner (R. 8-9).

The case was submitted to the court on the basis of a stipulation purporting to state "all the material facts" (R. 2, 3-6). However, it merely recounted those facts set forth above, without indicating whether Angel Yiatchos' purchase of the bonds and the naming of petitioner as beneficiary were for consideration, or otherwise; whether these actions were intended to be for the benefit of the community; whether they were undertaken with or without his wife's knowledge and/or consent; or whether, if Angel acted initially without his wife's consent, she subsequently ratified his action (R. 3-6).

On the stipulated facts, the trial court held that state community property law governed ownership of the bonds. Because the bonds were purchased with community funds they were held to be community property, in which the surviving wife was entitled to a one-half interest. The remainder was ordered returned to the estate and distributed to Angel Yiatchos' sisters, nephew, and brother (R. 13-14). The trial court made no finding of fraud or breach of trust. The petitioner was directed to endorse the bonds to make them available as community property in accordance with the judgment (R. 7, 16).

While the petitioner's appeal to the Washington Supreme Court was pending, this Court entered its

decision in *Free* v. *Bland*, 369 U.S. 663. The Washington Supreme Court nevertheless affirmed the judgment of the trial court. It approved the trial court's statement that "the community cannot be deprived of community funds by the purchase of government bonds," and reasoned that this case came within the exception for fraud or its equivalent noted in *Free* v. *Bland*, *supra*, because the purchase of bonds out of community funds in itself constituted a "constructive fraud," in violation of the rights of the respondent wife (R. 19-20). It affirmed the holding that petitioner was entitled to nothing under the terms of the bonds, on the ground that, since the purchase constituted a "constructive fraud," it was "void *ab initio*" (R. 19).

INTEREST OF THE UNITED STATES

This brief is filed pursuant to an invitation, set forth in this Court's order allowing certiorari, seeking an expression of the views of the United States[1] (R. 23, 372 U.S. 905).

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[1] Statistical samplings made by the Treasury Department indicate that approximately eighty percent of the Series E savings bonds outstanding (which total nearly $39 billion) are registered in co-ownership form ("A and B"), and nearly fifteen percent in beneficiary form (A, payable on death [or P.O.D.] B). Although bonds registered in co-ownership form are payable to either owner during the lives of both co-owners, while those registered in beneficiary form are payable only to the registered owner during his lifetime, the survivorship provisions of both types of bonds are substantially identical. Compare 31 C.F.R. 315.66 (*infra*, pp. 21-22) with 31 C.F.R. 315.61.

In our view, the decision of the Washington Supreme Court improperly limits the scope of the Treasury Department regulations governing ownership interests in savings bonds, and unduly restricts the effect of this Court's decision in *Free* v. *Bland*, 369 U.S. 663. These consequences are of concern to the United States because they affect the sale of savings bonds which, in turn, plays a vital role in the financing of the government's debt. There are now estimated to be nearly $39 billion of outstanding United States Series E savings bonds, registered in either the "co-ownership" or the "beneficiary" form and thus providing a right of survivorship such as that involved in the present case. It is reasonable to assume that a large proportion of these bonds were purchased in order to obtain the survivorship benefits conferred by their terms and by the express provisions of the Treasury regulations. An unjustified disregard of the rights of survivorship conferred by these Treasury bonds detracts from the appeal which savings bonds have to small-scale purchasers—to the detriment of government financing.

SUMMARY OF ARGUMENT

I

This Court's decision in *Free* v. *Bland*, 369 U.S. 663, established that federal law controls the beneficial ownership of savings bonds; that, except in cases of fraud or an equivalent breach of trust, the express provisions of the bonds and incorporated Treasury regulations specify the owner of savings

bonds; and that fraud or an equivalent breach of trust constitutes an exception to be defined under federal law. Beyond this, it is apparent that, in light of the terms and purposes of the applicable Treasury regulations and ordinary principles of proof, the burden of showing fraud or its equivalent falls upon the person attacking the ownership specified by the savings bonds themselves.

That burden has not been met in the present case, for the respondents did not allege or undertake to show either that the deceased husband committed fraud or a breach of trust in purchasing the bonds in question or even that he purhased them without the consent or ratification of his wife. The fact that the bonds were purchased by the husband with community funds is as consistent with the wife's consent and authorization as with a breach of trust by the husband and so cannot, of itself, sustain the respondent's burden. However, since this case was tried on facts stipulated prior to this Court's decision in *Free* v. *Bland*, *supra*, we suggest that the case should be remanded to enable the respondents to attempt to show fraud or an equivalent breach of trust.

II

Even if the state court had been justified in finding fraud, the remedy it provided, which denies all effect to the ownership provisions of the bonds, is contrary to applicable federal law. It is conceded that the bonds were purchased with funds at least one-half of which were equitably and beneficially the

property of the purchasing husband. There is therefore no justification for denying effect to the ownership provisions of the bonds and the Treasury regulations as to a one-half interest in these bonds. The proper remedy, adopted previously by other state courts, is either to declare a trust in behalf of the wife as to a one-half interest in the bonds or to give the wife judgment for one-half their value against the registered owner.

ARGUMENT

I

SINCE THERE WAS NO SHOWING OF FRAUD, OR AN EQUIVALENT BREACH OF TRUST, IN THE PURCHASE OF THE BONDS, THE STATE COURT ERRED IN HOLDING THAT THE REGISTERED BENEFICIARY WAS NOT ENTITLED TO OWNERSHIP

Introduction

In *Free* v. *Bland*, 369 U.S. 663, this Court resolved a conflict among state courts as to the relationship between the ownership and survivorship provisions of United States savings bonds and the divergent state laws of property and devise and descent. In that case, a husband in a community property State had purchased savings bonds with community funds, and had registered them in co-ownership form, with himself and his wife as co-owners. Under the terms of the Treasury regulations, upon the death of either co-owner the survivor became the sole, absolute owner of the bonds.[8] The wife died first, and her son, who

[8] 31 C.F.R. 315.61, and 31 C.F.R. 315.20(a) (*supra*, pp. 20-21).

was the principal beneficiary under her will, demanded one-half of the bonds or reimbursement for the loss of her community half-interest in the funds used to purchase the bonds. The state court awarded the son reimbursement on the ground that, under state law, the bonds were community property, even if both husband and wife intended to create survivorship rights, because the bonds were purchased with community property.

This Court reversed, ruling that beneficial rights of ownership were to be determined by the Treasury regulations, which prevailed over any conflicting state law. 369 U.S. at 668. The Court held that the federal government's authority to issue the bonds and regulate their terms had been delegated by Congress to the Secretary of the Treasury (31 U.S.C. 757c (a)), who was authorized to make the bonds an attractive investment to savers and investors by providing simple and certain survivorship terms which avoid complicated probate proceedings. 369 U.S. at 667-669. Any rule of state law in conflict with these terms had, therefore, to give way to the paramount federal law expressed in the Treasury regulations. Accordingly, this Court reversed the state court decision.

The Court recognized, however, that there was "an exception implicit in" the Treasury regulations, "so that federal bonds will not be a 'sanctuary for a wrongdoer's gains.'" 369 U.S. at 670. Upon a showing of "fraud or a breach of trust tantamount thereto on the part of a husband while acting in his capacity as manager of the general community

property," the Court stated, relief would be available to the wife or those who succeeded to her interest in the property. 369 U.S. at 670. Since the record on summary judgment did not raise any issue of fraud, the Court remanded the case for further proceedings and reserved, for "another day," a determination of "the doctrine of fraud applicable under federal law," 369 U.S. at 670-671.*

The following propositions may therefore be taken as settled by this Court's decision in *Free* v. *Bland*, *supra*: (1) that the beneficial ownership of savings bonds is to be determined in accordance with federal law; (2) that, except in cases of fraud or its equivalent, the express provisions of the bonds and the Treasury regulations govern beneficial rights of survivorship, notwithstanding the fact that the bonds were purchased from community funds; and (3) that fraud or its equivalent constitutes an implied exception to the provisions of the bonds and Treasury regulations, the scope and application of which are to be defined by federal law.

A. *Under The Treasury Regulations The Registered Beneficiary Of A Savings Bond In The "Beneficiary Form" Must Be Recognized as The Owner After The Death Of The Registered Owner, Absent An Affirmative Showing Of Fraud Or An Equivalent Breach Of Trust*

The Treasury Regulations controlling the ownership of savings bonds in the beneficiary form, such

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* Citing *Holmberg* v. *Armbrecht*, 327 U.S. 392; *Clearfield Trust Co.* v. *United States*, 318 U.S. 363.

as those involved in this case, provide that "upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner" (31 C.F.R. 315.66, *infra*, p. 22) and that "no judicial determination will be recognized which * * * would defeat or impair the rights of survivorship conferred by these regulations upon a surviving * * * beneficiary" (31 C.F.R. 315.20, *infra*, p. 20). By their very terms, these regulations confer a presumptive validity on the designation of the beneficiary by the purchaser of the bonds. This assurance that the beneficiary will be treated as the owner on the death of the registered owner (absent affirmative proof of fraud or breach of trust) is at the core of the purposes served by the Regulations. For the Treasury is attempting to sell bonds by providing "a convenient method of avoiding complicated probate proceedings" (*Free* v. *Bland*, 369 U.S. at 669) and by furnishing a simple yet sure means of controlling the devolution of property. Without the presumption of validity of the purchaser's designation of the beneficiary, it is apparent (1) that the purchaser of a savings bond in the "beneficiary form" would have far less assurance that the Treasury's offer to create property rights in the chosen beneficiary would be honored by the state courts; and (2) that, even absent any claim of fraud or breach of trust, the beneficiary of such a bond would have to undergo comparatively complicated probate proceedings to prove his right to the savings bonds.

Moreover, as this Court held in *Free* v. *Bland*, 369 U.S. at 670, 671, it is "the doctrine of fraud applicable under federal law" which measures the implied exception to the ownership provisions of the Treasury Regulations. It is well settled under the decisions of this Court that one who asserts a federal right or defense based upon fraud has the burden of pleading and proving it. *United States* v. *Colorado Anthracite Co.*, 225 U.S. 219; *United States* v. *Wunderlich*, 342 U.S. 98, 100. As the Court said in *United States* v. *Colorado Anthracite Co.*, *supra* (225 U.S. at 226): "Fraud is not presumed, and one who bases a right or defense upon it should allege and prove it."

It is, therefore, plain that the burden of pleading and proving such fraud or breach of trust as would constitute an implied exception to the ownership provisions of the Treasury Regulations lies upon the party attacking the claim of the registered owner or beneficiary.

B. *The Decision Below Cannot Stand Because the Respondents Did Not Meet Their Burden of Showing Fraud Or an Equivalent Breach of Trust*

We do not question that in an appropriate case a state court may, consistently with the Treasury regulations, grant relief to a wife whose husband has improperly made gifts, in the form of savings bonds, in derogation of the wife's interest in the community property. Plainly, however, the husband can be guilty of a breach of trust only if he acted without the consent and authorization of the wife. And, as we have shown *supra*, pp. 11-13, the party attack-

ing the rights of a registered owner or beneficiary of savings bonds must allege and prove the charge of fraud or breach of trust.

Respondents, however, neither alleged nor undertook to prove that petitioner's rights as the registered beneficiary of the savings bonds were obtained as a result of any fraud or breach of trust. Nor did they allege or show that the husband had purchased the bonds without the approval or ratification of his wife. They established only that the bonds were purchased seven years prior to the husband's death with community funds; that they were bought by the husband, who is manager of the community; and that they were payable to the husband's brother on the husband's death. But this showing is fully as consistent with the wife's initial consent or later ratification during the ensuing seven years as with a conclusion that the purchases were in breach of the husband's duties as manager of the community assets. There is thus no adequate basis in the record for the state court's conclusion that "this was a unilateral attempt to convert community property into separate property" which was "in fraud of the rights of the respondent wife" (R. 19).

Without either an allegation or any evidence of lack of consent or authorization by the wife, the respondents failed to sustain their burden of showing such a breach of trust as would constitute an exception to the provisions of the Treasury regulations conferring ownership upon the registered beneficiary. Indeed, if a registered beneficiary could be put to the test of proving his entitlement to savings bonds by the

mere showing that they were purchased with community funds by the manager of the community property, the Treasury's offer of a simple and sure devolution of property would be largely illusory in a community-property state.

C. *The Judgment Of The Washington Supreme Court Should Be Vacated And The Case Remanded To Allow The Respondents To Attempt To Prove Fraud Or An Equivalent Breach Of Trust*

This case was tried on facts stipulated prior to this Court's decision in *Free* v. *Bland*, 369 U.S. 663. The stipulation was not directed to the question of the wife's consent to or ratification of the purchase of the bonds in issue and, indeed, there was some reason for the parties to assume that this issue would not be material under the applicable precedents in the State.[10] In this situation we believe that the respondents' failure to prove fraud or an equivalent breach of trust may not justify the entry of judgment for petitioner without further proceedings.[11] We therefore respectfully suggest that the decision below be reversed and the case remanded to allow the state court to furnish the respondents an opportunity to allege and offer proof of fraud or an equivalent breach of trust.

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[10] See, *In re Allen's Estate*, 54 Wash. 2d 616, 343 P. 2d 867.

[11] On remand from this Court's decision in *Free* v. *Bland*, *supra*, the Supreme Court of Texas has ruled that the failure to plead fraud in these circumstances is dispositive. *Bland* v. *Free*, 359 S.W. 2d 297.

II

EVEN IF RESPONDENTS PROVE A BREACH OF TRUST EQUIVALENT TO FRAUD UPON THE WIFE, PETITIONER IS ENTITLED TO A ONE-HALF INTEREST IN THE BONDS

In our view the Washington Supreme Court erred not only in its finding of fraud upon the wife but also in the relief granted. Even if fraud is proved on remand of this case it will be improper to deny petitioner, who is the registered owner of the bonds, a one-half interest in them.

Federal law not only controls the scope of the "fraud" exception to the Treasury regulations, but also limits the remedies appropriate to redress the injury caused. An appropriate remedy for fraudulent conduct must preserve the effect of the ownership provisions of the Treasury regulations so far as this is compatible with redressing the injury inflicted by the fraud of the purchaser. The purchaser's designation of a beneficiary should obviously be respected so far as it involves only the use of the purchaser's own funds and involves no fraud upon any third party. The remedy adopted by the Washington Supreme Court does not satisfy these basic criteria and so would be erroneous even if the court had correctly found that the husband's conduct was fraudulent.

To remedy what it had found to be fraudulent conduct in the husband's purchase of savings bonds with community funds, the Supreme Court of Washington ordered that no part of the bonds should be considered owned by the registered beneficiary. Their entire value was to be contributed to the estate as communi-

ty funds, one-half of which would go to the surviving wife and the other half of which would pass pursuant to the husband's will (R. 15-16). This result did vindicate the asserted wrong to the wife, but it also conferred a windfall upon the other respondents in this case (who were legatees under the husband's will). Moreover, it denied the purchaser of the bonds the right to select his beneficiary even as to the one-half interest purchased with his own funds. Although Angel Yiatchos owed his legatees no obligation in the management of his and his wife's property, and his action in purchasing the bonds could not possibly be considered fraud or a breach of trust as to them, under the decision below they benefited from his alleged fraud against the wife, at the expense of the registered beneficiary of the bonds.

The regulations may not be read to create an exception to their express provisions which is any broader than necessary to protect the rights of those who have been defrauded or otherwise wronged. The court below (assuming that there had been proof of fraud) should either have imposed a trust on the bonds in favor of the wife to the extent of a one-half interest in them or entered judgment for her against the petitioner in an amount equal to one-half their value. These are the remedies which other state courts have normally adopted where they have found fraud or its equivalent in the purchase of savings bonds.[12] They follow the normal rule of restitution

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[12] *E.g.*, *Ibey* v. *Ibey*, 93 N.H. 434, 436, 43 A. 2d 157, 159; *Succession of Geagan*, 212 La. 574, 588, 599, 33 So. 2d 118,

which is to impose a constructive trust or its equivalent on the proceeds of the wrongdoer's gain, to the extent of the injured person's interest.[12] To go further, we submit, would be an unnecessary and unwarranted interference with the controlling provisions of the Treasury regulations.

CONCLUSION

For the foregoing reasons, the judgment of the Washington Supreme Court should be reversed and the cause remanded for further proceedings.

Respectfully submitted,

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SEPTEMBER 1953.

122, 126. See, *In re Haas' Estate*, 10 N.J. Super. 581, 77 A. 2d 523 (bonds ordered re-registered in proper name).

[12] Restatement, *Restitution* §§ 150, 151, 160. This rule also appears to prevail as to breaches of trust by the husband as manager of the community property in most community property states.

APPENDIX

Section 757c(a) of Title 31 U.S.C. provides:

> The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b)-(d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

Section 315.5 of Title 31 C.F.R. provides in pertinent part:

> United States Savings Bonds are issued only in registered form. The form of registration used must express the actual ownership of and interest in the bond and, except as otherwise specifically provided in Subpart E and § 315.48 of Subpart I of this part, will be considered as conclusive of such ownership and interest. * * *

Section 315.7 of Title 31 C.F.R. provides in pertinent part:

> Subject to any limitations or restrictions contained in these regulations on the right of any

person to be named as owner, coowner, or beneficiary, savings bonds may be registered in the following forms:

(a) *Natural persons.* In the names of natural persons in their own right.

(1) *Single owner.* Example:

"John A. Jones."

(2) *Coownership form — two persons (only).* In the alternative as coowners. Example:

"John A. Jones or Mrs. Ella S. Jones."

No other form of registration establishing coownership is authorized.

(3) *Beneficiary form — two persons (only).* Examples:

"John A. Jones payable on death to Mrs. Ella S. Jones;"

John A. Jones P.O.D. Mrs. Ella S. Jones."

"Payable on death" may be abbreviated to "P.O.D." as indicated in the last example. The first named person is hereinafter referred to as the owner and the second named person as the beneficiary.

Section 315.20(a) of Title 31 C.F.R. provides:

No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of

a savings bond and conflicting claims as to ownership of, or interest in, such bond as between co-owners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart.

Section 315.65 of Title 31 C.F.R. provides in pertinent part:

During the lifetime of the registered owner. A savings bond registered in beneficiary form, for example, "John A. Jones payable on death to Mrs. Mary C. Jones," will be paid or reissued upon presentation and surrender during the lifetime of the registered owner, as follows:

(a) *Payment.* The bond will be paid to the registered owner during his lifetime upon his properly executed request as though no beneficiary had been named in the registration. The presentation and surrender of the bond by the registered owner for payment establishes his exclusive right to the proceeds of the bond, and if he should die before the transaction is completed, payment will be made to the legal representative of, or the persons entitled to, his estate upon receipt of proof of the appointment and qualification of the representative or the identity of the persons entitled, in accordance with the provisions of Subpart N.

Section 315.66 of Title 31 C.F.R. provides:

After the death of the registered owner. If the registered owner dies without the bond having been presented and surrendered for payment or

authorized reissue and is survived by the beneficiary, upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, and payment or reissue will be made as though the bond were registered in his name alone (see Subpart K).

Section 11.04.230 of the Revised Code of Washington provides:

> If either co-owner of United States savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond.

Section 11.04.240 of the Revised Code of Washington provides:

> If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond.

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No. 46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

GUST YIATCHOS, *Petitioner*

vs.

PEARLE W. YIATCHOS, etc., et al

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE RESPONDENT AND INTERVENOR

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

OPINIONS

The statements in this connection of the Brief for the Petitioner (Page 1) are correct.

JURISDICTION

It is submitted that this Court does not properly have jurisdiction herein and the Writ of Certiorari should be dismissed, since any Federal question involved has been resolved by a previous decision of this Court in *Free vs. Bland*, 369 U.S. 663, 8 L ed 2d 180, 82 S. Ct. 1089, and the decision of the Supreme Court of the State of Washington in this case is in conformity therewith.

QUESTIONS PRESENTED

The question presented is whether a husband can, by using the device of United States savings bonds, purchase with community property in his name bonds payable on death to some third person, and deprive his

wife of her vested interests and share in the community property of the marital community, and further deprive the estate of community funds which, under the laws of the State of Washington, must be available for payment of community debts prior to the testamentary disposition of decedent's one-half community interest in the property.

STATEMENT

The deceased, Angel N. Yiatchos, during coveture of marriage to Pearle W. Yiatchos, purchased United States savings bonds with community property. On each bond purchased, Angel N. Yiatchos was registered as owner and petitioner herein, Gust Yiatchos, the brother of Angel N. Yiatchos, was registered as "Pay on Death" beneficiary. Angel N. Yiatchos died and by his will bequeathed all cash and bonds that he owned as of the date of his death to his relatives in Greece.

Petitioner brought suit, claiming ownership of the bonds as the registered "Pay on Death" beneficiary. Respondent, the widow, Pearle W. Yiatchos, as deceased's widow and executrix of the will of Angel N. Yiatchos, claimed a one-half interest in the bonds as her community share and asked that the remaining one-half interest be distributed according to the terms of the decedent's will. The respondent Counsel General of Greece, as attorney in fact for the legatees under decedent's will living in Greece, intervened, praying that one-half of the bonds be distributed to the widow and the remaining one-half be distributed to legatees of the will.

The trial court decided the case on the stipulated facts and ordered one-half of the bonds distributed to the surviving spouse and the remaining one-half inter-

est distributed to legatees under the will.

The Supreme Court of the State of Washington affirmed the trial court decision.

SUMMARY OF ARGUMENT

I.

This case is in accord with the decision of this Court in *Free vs. Bland, supra,* and within the exceptions noted by this court in that case.

II.

The attempt by deceased, Angel N. Yiatchos, to convert community property to separate property by the use of United States savings bonds is in fraud of the rights of respondent and therefore void and within the exception to the ruling in *Free vs. Bland, supra.*

III.

Treasury Regulations require that the form of registration of the bonds must express the actual ownership of and interest in the bonds. Since this was not done in this case, the other treasury regulations concerning survivorship and transfer of the bonds do not apply. (31 C.F.R. 315.0, et seq.)

ARGUMENT

I.

CONTRARY TO PETITIONER'S ASSERTION, THE OPINION OF THE WASHINGTON STATE COURT IS IN AGREEMENT WITH, NOT IRRECONCILABLE WITH, *Free vs. Bland, supra.*

The principal question involved in this case is whether a decision of this Court in *Free vs. Bland, supra,* is decisive in the present case as argued by petitioner in

petitioner's Brief for the Petitioner (Page 11). It is obvious that the factual situation in this case is different from the factual situation in *Free vs. Bland, supra,* and that this case is clearly within the exceptions noted by the Court in that case and urged by the Solicitor General in his amicus curiae brief in the case of *Free vs. Bland, supra.*

The holding, in *Free vs. Bland, supra,* is quoted as follows:

> We hold therefore that the state law which prohibits a *married couple* from taking advantage of the survivorship provisions of the United States savings bonds merely because the purchase price is paid out of community property must fall under the supremacy clause. (Emphasis supplied.)

In that case Mr. Free, acting with community funds, purchased the bonds naming the marital community of himself and his wife as co-owners. As manager of the community property, it was his privilege to select investments for the benefit of the community, which he would make, but the Court, in upholding Mr. Free's right to so invest community funds, also noted:

> Relief would be available in a case where the circumstances manifest fraud or breach of trust tantamount thereto on the part of the husband while acting in the capacity of manager of the community property.

The Yiatchos case fits into this exception and the relief sought to be maintained by respondent herein is the type of relief which the Court recognizes is available to her. In this case, a married couple does not seek to take advantage of the survivorship provisions of the Treasury Regulations. On the contrary, the husband in this case, Mr. Yiatchos, as manager of the community prop-

erty, has sought to use the device of United States savings bonds to deprive the wife of her vested interest in the community property and to make a gift of community property to his brother, the petitioner. The factual situation in the Yiatchos case, the present case, is clearly distinguishable from the factual situation upon which the Court decision in *Free vs. Bland, supra*, is based.

II.

THE ATTEMPT BY DECEASED, ANGEL N. YIATCHOS, TO CONVERT COMMUNITY PROPERTY INTO SEPARATE PROPERTY BY THE USE OF UNITED STATES SAVINGS BONDS IS IN FRAUD OF THE RIGHTS OF RESPONDENT AND THEREFORE VOID WITHIN THE EXCEPTION TO THE RULING IN *Free vs. Bland, supra*.

The Washington State Supreme Court, in its decision, found, as a matter of law, that

> The husband's purchase with community funds of bonds payable to him alone or after his death payable exclusively to his brother was in fraud of the rights of respondent wife, Pearle W. Yiatchos. This was a unilateral attempt to convert community property into separate property and void ab initio.

A husband is under a fiduciary duty to act for the benefit of the community. *(Yiatchos vs. Yiatchos*, 60 Wn 2d 179, 373 P 2d 125) He cannot make gifts of community property, even to his own relatives. *(Marston vs. Rue*, 92 Wn 129, 159 Pac. 111) His investment must be for the benefit of the community. *(Small vs. Bartyzel*, 27 Wn 2d 176, 177 P 2d 391) He cannot, as petitioner argues, unilaterally divide community property and decide which part of the property is his and

which belongs to the spouse. *(Cohn vs. Cohn*, 4 Wn 2d 322, 103 P 2d 366)

Obviously, Mr. Yiatchos' actions were fraudulent to the rights of Mrs. Yiatchos, who knew nothing of the bonds until she opened her husband's safety deposit box after his death.

It is, however, argued by petitioner in Brief for the Petitioner (Page 12), and in a law review comment on the case, 38 Wash. L. Rev. 255, that a doctrine of fraud enunciated by the Federal Court must be followed and that for the sake of uniformity, the single clear and concise definition of what they refer to as "Federal fraud" should be made by this Court.

The answer to this contention is that it seems it would be impossible for any court to define fraud without including the situation where an individual invests funds he has no right to invest for the purpose of divesting a rightful owner of an interest in those funds.

It is submitted that it would be well to adopt a rule that the test as to whether or not the survivorship provisions of the Treasury regulations concerning U. S. savings bonds applied would be that the purchaser of the bonds should have ownership or the right to invest the funds used to purchase said bonds.

As a mater of fact, the Treasury regulations themselves so provide. (31 C.F.R. 315.0, et seq.; 315.5, 315.7, 315.20, 315.66)

III.

TREASURY REGULATIONS REQUIRE THAT THE FORM OF REGISTRATION OF THE BONDS MUST EXPRESS THE ACTUAL OWNERSHIP OF AND INTEREST IN THE BONDS.

> Section 315.5 General. United States savings bonds are issued only in registered form. The form of registration must express the actual *ownership of* and *interest in* the bonds. (Emphasis added.)

This regulation necessarily implies that the purchaser or purchasers must own or have authority to invest the funds used. In *Free vs. Bland, supra*, the bonds purchased met the requirement that the registration must express actual ownership of and interest in the bonds. The husband and wife, and only the husband and wife, had an interest in the bonds purchased. In this case the brother, Gust Yiatchos, who is also petitioner, had no interest in the moneys used to purchase the bonds. It is conceded that community funds were used. The brother, Gust Yiatchos, had no interest in the bonds and like Mrs. Yiatchos, had no knowledge of their existence until the death of Mr. Yiatchos.

A further question to be decided by this Court is whether or not the testamentary disposition by the deceased or the survivorship provisions of the Treasury Regulations pertaining to the bond should control the disposition of the deceased's one-half interest in the bonds.

The Supreme Court of Washington correctly found that this unilateral attempt to convert community property into separate property was void ab initio and that the provisions of the subsequent will of the deceased distributing the funds should be followed.

As argued previously in this brief, the Treasury Regulations require the actual ownership and interest in the bonds to be expressed in the registration, and if so expressed, will be considered as conclusive of the ownership and interest.

It would appear to be the intent of the drafters of the Treasury Regulations that this provision was a condition precedent to the subsequent provisions of Sections 315.7, 315.20, and 315.66 concerned with the beneficiary provisions.

In the opinion of counsel for respondent the statement of the "Question Presented" by its own language contains the answer to said question.

In the State of Washington a wife has a vested property right in the community property equal to that of her husband. *Poe vs. Seaborn*, 75 L. ed. 238, 282 U.S. 101 (1930); *Warburton vs. White*, 176 U.S. 484, 44 L. ed. 555, 205 Ct. 404.

The purchase of the bonds with community funds by the husband in this case, without the knowledge or consent of the wife, constitutes a fraud on the wife without further evidence.

Petitioner, apparently recognizing the weakness inherent in the position that the named beneficiary is entitled to the total proceeds of the bonds, takes a secondary position that even if a husband cannot give away the wife's money, then and in that event, full force and effect should be given to the beneficiary designation as to the remaining one-half interest in the proceeds of the bonds.

The error of petitioner's reasoning on this issue is obvious. R.C.W. 11.04.050 provides:

> Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposi-

tion shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living or none of their representatives living, then the said community property shall all pass to the survivors, to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

If petitioner's position is sustained, the share paid to the named beneficiary would escape the obligation to pay community debts. In other words, the fraud practiced on the wife would carry over to her share from the bond proceeds in that her share could be completely depleted in payment of community debts.

The fact that this particular estate is solvent is immaterial to the issues of this lawsuit. A principle of law should be such that it applies equally to all persons on property rights. The respondent's position in this cause will result in the establishment of such a principle. The petitioner's position would permit husbands to perpetrate fraud upon their wives and then invite further litigation to determine the financial condition of the estate, which results in the absurd conclusion that if an estate is solvent, then in that event, the Courts will approve the fraud. We cannot conceive the law can or should be susceptible to this interpretation.

Petitioner's contention that the survivorship regulations should be enforced in spite of the fact that the original purchase was fraudulent and that a subsequent will specifically distributes the proceeds of these bonds is a futile attempt to salvage, for Gust Yiatchos, the petitioner, an interest which he never had. It would ap-

pear that if the initial transaction was fraudulent, the entire transaction was fraudulent. If the initial transaction, the purchase of the bonds, violated Treasury Regulations concerning the interest and ownership in them, the entire transaction was illegal. Being slightly fraudulent or being slightly illegal is akin to being slightly pregnant. The condition dates from the moment of conception and cannot be altered by subsequent intent of the parties.

The decision of the Washington Supreme Court concerning the survivorship provisions should also be upheld.

No useful purpose is served by upholding the contentions of the petitioner in either case. The marketability of United States bonds is not affected by the judgment of the Washington Supreme Court. A simple and direct method of automatically transferring ownership on death still exists and its attractiveness to purchasing husbands or married couples has not diminished. It is not or should not be the object of the Treasury Department nor the usual inducement to the purchaser that the bonds be used as a means of depriving a wife of any share of funds in which she has an interest, without her knowledge and consent or to provide a means of fraud, actual or constructive, or to provide a means of concealing ill-gotten gains and making bonds a sanctuary for the profits of fraud and theft. It is not such a motive that prompts the sale of United States savings bonds, and if such a motive should exist, certainly it should not be the policy of the United States Government to foster it.

CONCLUSION

The Writ of Certiorari should be dismissed as improvidently granted or, in the alternative, the judgment of the Supreme Court of the State of Washington imposing a trust upon the bonds for the benefit of the surviving widow and distributing the balance according to the terms of the will of the deceased husband, should be affirmed.

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